Smith, James Walter

A handy book on the law of bills, cheques, notes...

London

1902

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A

HANDY BOOK

ON

THE LAW OF

BILLS, CHEQUES, NOTES,

AND

I O U 'S;

ENTIRELY RE-WRITTEN.

BY

JAMES WALTER SMITH, ESQ.,
LL.D. (LOND.), B.A. (OXON.),
Of the Inner Temple, Barrister-at-Law,
AUTHOR OF HANDY BOOKS ON "JOINT-STOCK COMPANIES," "PARTNERSHIP," "BANKER AND CUSTOMER," "MASTER AND SERVANT," "PUBLIC MEETINGS," "HUSBAND AND WIFE," AND OF "LEGAL FORMS FOR COMMON USE."

"He is well paid that is well satisfied."
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SIXTY-FIFTH THOUSAND.

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PREFACE.

THIS little book has long been accepted by the commercial world and the general public as affording them —what is not to be found elsewhere—a cheap and compendious exposition of the law of inland negotiable instruments.

Being chiefly meant for the guidance of men and women in business, the book does not, by its title, pretend to supply the place of the full and elaborate treatises which are necessary to the practitioner; to whom, however, as well as to the student, it may, perhaps, be useful for its brevity.

The Bills of Exchange Act, 1882, is a masterly codification, by a very talented draftsman, of the law of negotiable instruments, both inland and foreign, and now stands as almost the only statutory enactment on the subject. But it does not answer the purpose of an explanatory treatise and, indeed, by its very conciseness, renders one the more necessary. The statute cannot be understood without reference to the judicial decisions on which it was founded.

This statute, though making little change in the law beyond the settling of uncertainties, has introduced new terms and classifications, and I have therefore thought it desirable to alter this book so as more nearly to coincide with the language and arrangement of the statute, from which I have made numerous quotations. The bulk of the book is thus slightly increased.

For those who are entirely unacquainted with negotiable instruments, an explanation of many of the technical terms used with reference to them is given in the first chapter.

The division of every chapter into numbered sections (each of which is frequently subdivided into several paragraphs), and the reference at the head of the chapters to the subjects treated of in each section, will probably be aids to perusal; but a full Index has been added.

The chapter (xxii) relating to the different forms and their uses and effects has been enlarged so as better to illustrate what has gone before. J. W. S.

CONTENTS.

CHAPTER I.

INTRODUCTORY.

OF BILLS AND NOTES, AND THE PARTIES TO THEM.

1. *Of a Bill of Exchange, and the names and relations of the parties thereto.*
2. *Of a Promissory Note, and the names and relations of the parties thereto.*
3. *How Bills and Notes are made payable, and therein of indorsement.*
4. *The Acceptor primarily, and other parties secondarily, liable.*
5. *The same of the maker of a Note.*

(B. E. A. stands for The Bills of Exchange Act, 1882.)

1. A bill of exchange is an instrument intended to enable a man who has funds in the hands of another to transfer them, or a part of them, to himself or to a third party. It is an unconditional written order signed by A and addressed to B, directing him to pay on demand or at a fixed or determinable future time, "a sum certain in money" to, or to the order of a specified person or to bearer; as to C, or to C's order, or to C or his order, or to bearer.

An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

A (who is called the *drawer* of the bill) is said to draw upon B, who is, therefore, called the *drawee;* and C, the person to whom the money is to be paid, is on that account called the *payee.* A *appears* to be the creditor of B and the debtor to C.

The drawer may be himself the payee, and he may direct B to pay him simply (as by the words "*pay to me*"), or to pay to him or his order (as by the words "pay to me or my order"). [See chap. xxii,—Forms.]

The drawer having signed this order, it should be

presented to the drawee to receive his assent. If the drawee assents to it, he (in this country) testifies such assent by writing his name across it (see the forms above referred to), which is called accepting the bill or draft, after which the drawee is called the *acceptor*. If he refuses to accept, he is said to *dishonour* the draft or bill by non-acceptance.

[The drawer must sign, and usually signs first; but, as will be seen presently, the acceptor may sign before the drawer's signature is written, or even across a blank stamped paper.]

The drawer being unable to know for certain whether the drawee will accept or, having accepted, will pay, may insert the name of a person to whom the holder may, if he pleases, resort in case of non-acceptance or non-payment. This person is called a "referee in case of need" or more shortly a "case of need."

When a person, in order to transfer his interest in a bill, writes his name on the back, he is called an *indorser*, and the person to whom his rights are so transferred is called an *indorsee*. Bills are often indorsed when the interest in them would pass without such indorsement, but in many cases it is necessary to indorse a bill in order to pass an interest therein; as if the bill be payable to the drawer or his order, the drawer must indorse in order to transfer his interest, and if the bill be payable to C or his order, C must indorse.

The drawer and C would in these cases be called *indorsers*, and the persons taking from them *indorsees*.

When the indorser has simply written his name on the back of the bill, or when no such indorsement or no further indorsement is necessary to transfer the interest in the bill, it is said to be payable to *bearer;* and a person transferring without indorsement is simply called the *transferor*, and the person who takes from him the *transferee*.

An indorser, like a drawer, may insert the name of a referee in case of need.

The *holder* is, in the words of Mr. Justice Byles, "the person in actual or constructive possession of the bill, and entitled at law to recover its contents from the parties to it."

I have now mentioned all the parties to a bill except an "acceptor for honour" (see chap. xii). A man of course does not become a party by being named as referee in case of need.

Where a person signs a bill otherwise than as drawer or acceptor he incurs the liabilities of an indorser (see B. E. A., s. 56 and chap. vii).

2. A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time a sum certain in money to, or to the order of, a specified person or to bearer (B. E. A., s. 83).

The person giving the promise is said to be the *maker* of the note, and occupies in relation to the holder a position resembling that of the *acceptor* of a bill; and the words *payee*, *transferor* and *transferee*, *indorser* and *indorsee*, and *holder*, are applicable with reference to notes, the same as to bills of exchange.

An ordinary bank note is a banker's promissory note payable to bearer on demand (see further as to form chap. xxii).

3. Bills of exchange, being intended for the transfer and transmission to third parties of debts due by one man to another, the drawer is supposed to be the creditor of the drawee, who is presumed to have in his hands effects of the drawer which the latter is desirous of transferring.

A banker is his customer's debtor when the balance of the current account is in the customer's favour, and an ordinary cheque on a banker is a bill of exchange payable on demand directing him to pay money to some payee.

It is for the drawer to consult his convenience as to how he shall direct the drawee to pay the money (1), at what time, or (2), at what place, and (3), to whom.

For instance, the bill may be payable (1) at sight, six months after date or after sight; (2) in London, or at Drummond's bank; (3) to the drawer or his order, or (4) to a third person (naming him), or to such person or his order, or (5) to bearer.

If the bill is payable to a named payee or the payee's order, the payee, in order to transfer his right in it, must indorse it, and the person to whom he gives it will take the money on the bill at maturity, by virtue of the order testified by the indorsement. If the bill be ex-

pressed to be payable to a person named without adding "or order," that person can still transfer it by indorsing it, unless it contain words prohibiting transfer, such as "pay C. D. only." Thus a bill payable to the drawer or to C. D. without "or order" would be negotiable.

If the indorsement be by simply writing the indorser's name, as is usual, the bill is then payable to bearer, and passes by delivery; though at each successive delivery an indorsement is often required for the security of the transferee.

The same rules apply where the bill is payable to the drawer or his order.

If the drawee is directed to pay "to bearer," the bill *needs* no indorsement to confer a title to the money, though indorsements are often given as the bill changes hands.

Promissory notes may be made payable in the same way as bills, and with the same results.

4. The acceptor is the person who is to be liable to the drawer on a bill (except a bill accepted for the drawer's accommodation), so long as it remains in the drawer's hands, and is *always* the person *primarily* liable to the holder (a term to be presently explained, see chap. xiii); and when the drawer delivers the bill to the payee, or bearer, or by indorsement transfers the bill to another, the drawer in his turn becomes liable, as well as the acceptor, to the holder of the bill, and so does every subsequent indorser, the security thus increasing with each indorsement.

The drawer is also liable upon every unaccepted draft of his which he transfers, for by so doing he makes an implied undertaking that upon presentment to the drawee it shall be accepted.

5. The maker of a note occupies a position similar to that of an acceptor of a bill, being the person *primarily liable*, and when the note is transferred by indorsement by the payee, the indorser likewise becomes liable to the holder of the note, as does every subsequent indorser. (As to the forms of notes, and the nature of *joint* and *joint and several* notes, see chap. xxii, s. 25.)

As all these parties have different rights and liabilities, it will be convenient to treat those of each one separately; but before doing so it is necessary to make some general observations upon the power which different

classes of persons have in law to bind themselves or others by becoming parties to bills or notes; for it is most important to every one who deals with these instruments to know the real position of those who may be liable to or with him.

Persons incurring such liability, whether on behalf of themselves or others, are said, in legal language, to *contract;* and the power to do this will be the subject of the next chapter.

CHAPTER II.

OF THE POWER OF PARTIES TO CONTRACT, AND THEREIN OF AGENCY AND PARTNERSHIP.

19. *Rights of Principal and Agent respectively to sue.*
20. *Of* Partnership, *and the mutual Agency of Partners.*
21. *Of the various kinds of Partners, and how they can bind or be bound by one another.*
22. *Of* Dissolution—*how it affects the power of one Partner to bind another.*
23. *Miscellaneous matters connected with the above subjects.*

1. Bills and notes are one kind of *contract*. The power to bind oneself by bills and notes is co-extensive with the capacity to contract.

It is easy to decide how a bill or note shall be made payable; but it is far more important to be able to know how far the persons who are to be parties to these instruments are by law capable of contracting, so as to bind themselves or others.

Every one who contemplates dealing with a bill or note should carefully consider whether those who are already, or are about to become, parties to the instrument are capable of binding themselves; or, if they sign as agents for others, whether they are capable of binding those others.

2. I will first mention the disqualifications attaching upon the person of a contracting party in his individual capacity. I say "upon his person," because there are certain classes of people who are by law wholly or partially incompetent to contract; and I say "in his individual capacity," because one who cannot bind himself may yet be an agent to bind another.

An infant, *i. e.* a person under full age, cannot bind himself or herself by a bill or note. If it be given for the price of necessaries he may be liable during infancy or when of age on the consideration, but not on the instrument itself. If, however, he induced the other party to deal with him by pretending to be of age, he cannot set up the defence of infancy.

And the Infants Relief Act, 1874, says no action is to be brought "whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, with or without new consideration for such promise or ratification after full age." So that, if an adult gives a bill or note for his debt contracted during infancy or in ratification of a contract then made, the person who takes the bill or note from him cannot recover on it; though it is presumed a holder in due course could do so. It has been held (1892, 2 Q. B., 543) that where an action was brought against an adult on a contract made by him during infancy and he gave a bill to settle the action, it was a ratification merely, and the man who took it could not recover on it.

But if an adult person become acceptor of a bill, the *mere fact* that it was drawn and dated while he was under age will not be a defence.

It may here be observed that if an acceptance be taken from an infant for a debt which he owes, he will, though not bound by the acceptance, be entitled to credit, like any other person, for the time the bill has to run, during which he cannot be sued either on the bill or on the original debt.

An infant may sue on a bill which he holds whether he is the drawer or not; for though he is not bound, the other parties may be bound to him.

If an infant is a party jointly with an adult (whether as partner or not) to a bill or note, the party suing on it may sue the adult only.

Corporations, in which term are included Joint Stock Companies, may or may not be capable of binding themselves by becoming parties to bills and notes. Their power to bind themselves depends generally on whether or not they are formed for purposes for which such instruments are required; in other words, whether they are trading companies. "A mining company, a cemetery company, a salvage company, a gas company, an alkali works company, and a waterworks company, have been held non-trading companies" (*Chalmers on Bills*).

The provision in the Companies Act, 1862, which prescribes the mode in which companies are to subscribe bills and notes, merely points out the way in which it is to be done so as to bind such companies as may lawfully so bind themselves, and does not enable any to bind themselves who otherwise might not, and the B. of Exch. Act, 1882, does not extend the authority.

Non-trading companies established by statute or by charter cannot make themselves liable on bills or notes

without being expressly authorized by the instrument of incorporation.

But a corporation without capacity to bind itself may sue on a bill which it holds, whether it is the drawer or not.

And "where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill and to enforce it against any other party thereto" (B. E. A., s. 22).

Some merchants draw their bills payable to the order of an infant clerk, so that he can indorse them without liability and without adding *sans recours* (see chap. iv, s. 9), which might discredit the bill.

3. Married women suffered till lately, with certain exceptions, under an incapacity to contract; but now a married woman is "capable of entering into and rendering herself liable in respect of and to the extent of her separate property, on any contract, and of suing and being sued, either in contract or in *tort* or otherwise, in all respects as if she were a *feme sole* (single woman), and her husband need not be joined with her as plaintiff or defendant" (*Married Women's Property Act*, 1882, s. 1). So that a married woman's liability on a bill or note depends on whether, when she became party to it, she had separate property or not. But if she is the holder of a bill or note she may sue on it without any question of separate property.

4. Insane persons are under disability to contract only *while* they are insane, unless they have been declared lunatics under a commission of lunacy, in which case the commission must be superseded before any valid contract can be made with them, even during a lucid interval.

Idiots are persons who never have sufficient wits to be of a contracting mind, so that although they may go through an exterior form of contracting, as by making a mark, yet no actual contract can be made with them.

Persons who are drunk, or whose mental faculties are by some accident materially impaired, whether for a long or a short time, are, during such states, incapable of contracting.

5. But, though infants cannot bind themselves, yet

they may be agents for others so as to bind those others; and a married woman may be an agent as well for strangers as for her husband. So, indeed, might a lunatic bind people who were foolish enough to employ him.

6. But to ascertain whether a person is capable of personally binding himself is generally far easier than to discover, in cases where he affects to act as agent, whether he is capable of binding those whom he pretends to represent. This, which at first sight would appear simple, will be found to require careful attention.

It is scarcely necessary to say that where one man appoints another his agent (which may be by word of mouth as well as by writing, and no particular form is necessary), the agent becomes able to bind his principal as to all matters within the scope of his authority. We are not speaking now of contracts under seal, *i. e.* by deed, to execute which the agent must be appointed by deed; for this work does not treat of any contracts which come under that class.

7. But it is not merely by virtue of an *actual* authority that one man becomes able to bind another; for A may hold such a position with regard to B, as that without such authority to act as agent, nay in the face of an express contract *not* to act as agent, A will be presumed by the law to have authority so to act, and will be capable of binding B in contracts made with all persons who are not aware of the actual arrangement between A and B.

In other words, a man who is not actually an agent may be an agent to the world, though in so acting he be exceeding his authority, or even be guilty of a breach of contract as between himself and his supposed principal.

Authority, therefore, is divided into *real* and *presumptive;* real being where a man has actually or impliedly authorized another to do certain acts; and presumptive being where a man by his conduct holds out another as being authorized to bind him: for whether that other be really authorized or not, the public have under certain circumstances a right to conclude that such authority exists.

In fact real authority arises from the act of the principal, and presumptive authority from the appearances held out to the world. And both these kinds of authority

may be either *limited*, *i. e.* as to time, particular acts or mode of business, or *general*, *i. e.* extending to all acts connected with the principal's affairs at all times. If the supposed agent acts without or exceeds his real authority, and has no presumptive authority, he alone is liable.

8. In case of doubt whether a man has real authority or not, the best course, where practicable, is to ask his principal. Where the alleged authority is in writing, and is shewn to you, you must judge for yourself of its sufficiency, and whether the act which the agent proposes to do is within its scope.

There are many cases where you may be quite sure that a man is agent for another for *some* purposes, as in the case of clerks, foremen, attorneys, &c.; but you are not entitled to presume from the situations of those persons that they are capable of binding their employer in bill transactions; you must therefore be satisfied before dealing with them that they have a distinct authority, or a presumptive one, from a ratification of their former dealings.

9. An agent may have a special or limited authority referring to a single bill or note, or he may have a general authority to become a party to all bills or notes: clerks, and foremen at home, and other agents at a distance, are often general agents. A general authority to transact business does not enable the agent to bind his principal by accepting or indorsing bills. And special or limited authorities to accept or indorse are construed strictly.

10. We will now pass on to the cases of presumptive authority; that is, cases where, not knowing whether a man is authorized or not, you may presume that he is so.

Authority may be presumed from custom and acquiescence; as where A had been in the habit of indorsing and accepting for B in his name, and B had recognized A's acts (as by paying the bills or otherwise), B cannot defend an action on one of A's acceptances, on the ground that it is a forgery, and, in order to defend successfully on the ground of want of authority, will have to give distinct evidence of revocation of authority, and perhaps also of notice of such revocation. And it is a question for a jury whether a man has held out

another to the world as his agent by thus ratifying and adopting his acts.

Where an agent proposes to indorse bills which are already in his hands, it is quite as important to inquire into his authority as if he were about to draw or accept a bill; for if he signs another's name without authority, the latter is not bound, and the agent, not having signed his own name, will not be liable *as indorser*, but only in an action for damages for representing himself as authorized. The person taking a bill through such an indorsement, cannot recover upon it and will have to give it up to the owner o to account for any money, bills or other value obtained for it.

A forged or unauthorized signature is wholly inoperative, and gives no right to retain the bill, recover on it or give a discharge for it. (See B. E. A., s. 24.)

This refers to bills payable to order; if, however, the bills are originally made, or have by genuine indorsement become, payab e *to bearer*, the agent in possession of them may be presumed to have authority to transfer. But in whatever way the bills are payable, the transferee, if he knows the agent has no authority to transfer, will be unable to sue the principal and will be responsible as above mentioned.

And when *overdue* bills, even though payable to bearer, are improperly transferred by an agent, the transferee obtains no title to them, though he were ignorant of the absence of authority to transfer. The fact of their being overdue should put the transferee upon his enquiry; he takes them at his peril and is responsible as above mentioned.

11. When a *general* agent is once constituted, his authority is presumed to continue till notice is given of its revocation. When a person has dealt with a principal through an agent, or has become acquainted with the fact of his agency through business transactions, that person is entitled to presume that the agency continues, until he has individually received notice that it has ceased. To persons who have not had such dealings with the firm, notice in the *Gazette* is sufficient.

12. An agent cannot appoint another person to act for him in the agency, unless specially authorized to do so.

13. No person is liable as drawer, indorser, or ac-

ceptor of a bill who has not signed it as such (B. E. A., s. 23). But the signature need not be written with his own hand and is sufficient if written by some other person with his authority. (*Ibid.*, s. 91.) "Person" includes a joint stock company and any other corporation (*ibid.*, s. 2); but a corporation may sign by its seal (*ibid.*, s. 91); a mode, however, which is unnecessary and unusual.

Where a person signs in a trade name or assumed name, he is as liable as if he had signed his own name. (*Ibid.*, s. 23.)

The signature of the name of a firm is equivalent to the signature *by the person so signing* of the names of all persons liable as partners in that firm. (*Ibid.*) Thus if A. B. and C. D. are partners in the firm of B. and D. and A. B. signs "B. and D.," it is as if A. B. had signed his own name and C. D.'s name. If A. B. had authority to sign that name to a bill or note, it will bind C. D.; if not it will not make him liable, though it may operate as a transfer of the bill (see s. 19). So, if an agent had signed it in the same way, it would be binding on both partners, if the agent were authorized; otherwise not. The authority of agents has already been spoken of; that of a partner, who is a certain kind of agent, will be mentioned presently.

14. An agent may sign a bill or note for his principal by writing his principal's name with or without the addition of his own.

A person who signs for another usually adds the words *per procuration* or *per pro.* or *pp.* or *as agent for*; as if Jones signs for Robinson the signature may be "per procuration John Robinson, Abel Jones." This signature operates as a notice that the agent has only a limited authority to sign, and the person who takes a bill with such a signature is put upon his enquiry into the extent of the authority; for the principal is only bound if the agent was acting within his authority. (See B. E. A., s. 25.)

There are other ways in which the agency may be made to appear, as if the agent signs "C. D. by his agent A. B.," or "for the company, A. B., secretary," and, provided the signature clearly indicates that it is made on behalf of a principal, the person signing is not liable on the bill; but the mere addition to his signature

of words describing him as an agent or as filling a representative character will not exempt him from personal liability (B. E. A., s. 26). Thus, "A. B., C. D., Churchwardens," "A. B., C. D., Directors of the ——— Company," are signatures which impose liability on the persons signing. So where a bill drawn on a company was accepted by their agent, thus—"Accepted, per H. B.," and where another drawn on a mining company was accepted by the purser, thus—"Accepted, W. C., Purser," the additions to the names were considered to be mere matter of description, and the agent was held to be personally liable.

Except where the signature is an assumed name, trade name or firm name, no person is liable as drawer, indorser or acceptor of a bill who has not signed it as such.

So, if the agent omits to write his principal's name, his principal is not bound.

The simplest way of binding his principal is to write the name of the latter simply. If the man who is to take the bill is not satisfied with this, it is easy to add "by J. S., his agent."

15. If one man's name is written by a pretended agent without authority, the former is not bound; but the pretended agent will be liable, not on the bill—for he is no party to it—but for any loss arising from the false representation.

If, however, the pretended agent writes his own name in addition to that of his supposed principal, the agent is liable on the bill or note, but the other is not liable at all.

Neither the general agent, nor the purser, of a cost-book mining company can sign bills or notes so as to bind the company, but they themselves will be bound if they sign.

16. If you take a negotiable instrument purporting to be drawn, accepted, or made on behalf of a joint-stock company or other corporation, you must first ascertain whether it is a trading corporation or has special power to bind itself by negotiable instruments, and must then examine the articles, deed of settlement or charter to see who has authority to sign. And if the directors have power to authorize any person, or a person of any class, to sign, you must see the authority and that the

signature is affixed by the authorized person. The company's seal, as already stated, is alone sufficient if the company has power to bind itself (see s. 19).

17. A shopman, a foreman, a clerk, or a wife, has not, as such, authority to pledge a man's credit by putting his name to a bill; but there is often not only an express authority to such persons, but a presumed one arising from ratification or payment of bills already drawn, indorsed, or accepted by such persons, as the case may be.

An authority to indorse does not include an authority to draw, and *vice versâ;* and neither amounts to an authority to accept.

18. An agent holding a bill or note may sue and recover upon it the same as the principal; but if the principal cannot recover, no more can the agent.

So a principal, though his name do not appear on the bill or note, may take the benefit of it, if it be held for him by his agent; but is subject to any defence that might be set up against his agent. Thus, where a principal delivered a bill to his agent to be discounted, and the agent treated it as his own, and the transferee who discounted it only paid the agent a part of the money, the principal was held entitled to recover the remainder of the money from the discounter. But in that case, if the defendant, the discounter, had had a set-off against the agent, it could have been successfully pleaded against the principal.

19. The most important kind of agency, and that concerning which the greatest number of disputes arises, is the agency which one partner exercises for another.

Persons become partners with one another by "carrying on business in common with a view to profit," but do not become so by becoming members of a company formed under the Companies Acts, or by a special statute, or by letters patent; nor do they by taking a share in a mining company within the jurisdiction of the Stannaries (see Partnership Act, 1890, s. 1).

Every partner is presumed to be the agent of his co-partners for carrying on the business of the partnership in the way usual in that kind of business, and acts done and instruments (other than *deeds,* which require a seal) executed by a partner relating to the business of the firm in the firm name or in a way which shows an

intention to bind the firm will be presumed to be binding on all the partners.

But if, by agreement between the partners, the position of that partner is such that he is not authorized to bind the firm in the particular matter, *and* the person with whom he is dealing either knows of the absence of authority or does not believe him to be a partner, the firm will not be bound (Partnership Act, 1890, s. 5).

Negotiable instruments being necessary in mercantile undertakings, a partner in a trading firm is presumed to have authority to become a party to such instruments in the firm name for partnership purposes. If the person who takes the bill or note from him knows he has no authority or does not believe him to be a partner, the firm is not bound *to that person;* but, if he transfers the instrument to another for value without notice, the presumption of authority is absolute and the firm will be bound to the transferee.

I have said "in a trading firm," for where the partnership is for other purposes, as for instance in case of farming, medical, and law partnerships, one partner cannot bind his co-partners by bills or notes.

A partner in a cost-book mine cannot bind his co-partners by bills or notes.

I have said "in the name of the firm," for the ordinary name of the firm must be signed on the instrument without any substantial variation.

If a bill be accepted, or a note made, by a partner in his own name, the firm will not be liable to the holder, although the proceeds were applied to partnership purposes.

If a bill or note is payable to the order of a corporation having no power to bind itself by negotiable instruments, the company may indorse it with the corporate seal or may authorize an officer to indorse it with the corporate name, and this will pass the property in the bill and enable the holder to recover against the other parties but not to sue the company (B. E. A., s. 22). If the instrument is payable to the order of a non-trading firm, a partner may without express authority pass the property in the instrument by indorsing the firm name; but he must have the express authority of his partners to indorse if the indorsee is to have recourse against the firm.

So if a bill or note be made payable (on its face or by special indorsement) to a firm by a wrong name, and it has to be indorsed away, the indorsement must be also in the wrong name; but, as no partner has presumed authority to bind the firm by writing a wrong firm name, the partner who, without express authority, indorses the instrument away in that name does not bind the firm, but he passes the property in the bill, and the holder can sue all the other parties. Of course the partners can authorize one to call the firm, for that occasion, by a wrong name, and then they will all be bound.

20. In a trading firm, whatever agreement may have been made among the partners, persons not aware of its nature may always presume that each partner has authority to bind the others by bills or notes. It will always be safe, therefore, for persons so circumstanced to take a bill or note on which the name of the firm is written by one of the partners.

There are two kinds of actual partners, namely (1), "ordinary" partners; and (2) "dormant" or secret partners. Other names are given to denote a man's present or past relationship to a firm. One who has just joined others who are already established is called a "joining" or "incoming" partner; one who has been a partner, but has left the firm, is called a "retired" partner; and those whom he leaves, and who go on with the business, are called "continuing" partners, a name which is also applied where only one is left in the business, who is, of course, no partner at all. Where the dissolution is by death, the term "surviving" partner is similarly used, and so is the term "solvent" partner where the dissolution is by the bankruptcy of one or more. To these must be added "ostensible" or "nominal," a term applied to one who appears to be a partner but is not.

Ordinary partners are those who are recognised, both among one another and by the public, as carrying on the business in common with a view to profit.

Dormant partners are those who take part in the profits of the business, or for whom it is carried on, as partners, without being ostensibly members of the firm. Their liability is the same as that of ordinary partners, and they may be held liable on their connection with the firm being *discovered*, though the person claiming against the firm was not originally aware of the existence of any dormant partner.

A new or joining or incoming partner is not liable for any debts arising, or for any negotiable instruments signed, before he joined the firm.

A retired partner is bound by all the transactions of the firm which took place before the retirement, though the right to sue on them may not arise till after the retirement. For instance, if the firm had drawn a bill before the retirement, and the dishonour took place after it, the partner who had retired would be liable as drawer. He is also bound on the contracts of the firm with all persons who dealt with the firm after the retirement but without knowledge or notice of it.

This notice should be given individually to customers, correspondents and those who deal with the firm; but it is sufficient to apprise the public in general by a notice in the London, Edinburgh, or Dublin *Gazette*, according as the principal place of business is in England, Scotland, or Ireland (see Partnership Act, 1890, s. 36). This notice, however, is by no means necessary, for there are many other circumstances, such as a change of names over the door, or on the invoices, or, in case of bankers, on the cheques, &c., from which it will be presumed that those acquainted with the place of business, or who had seen the invoices, or in case of bankers the altered cheques, knew of the change in the firm.

The continuing and the surviving partners of course continue liable on the contracts of the firm together with the retired partner and the personal representative of the deceased partner. The liability on the contract is unchanged, and we have nothing to do here with what arrangements for release and indemnity may have been made between the partners themselves, and this is not the place to discuss the relation of a solvent partner with the estate of the bankrupt partner.

It may be mentioned here, however, that when one partner is dead the right to all the *choses in action*, including rights on all bills, cheques, and notes, survives to the survivor who may sue on them alone, subject to the duty of accounting.

Ostensible or nominal partners are those who, without being actual partners, have by word or act held themselves out as partners, or allowed others to do so.

It sometimes happens, for instance, that an outgoing partner agrees to allow his name to continue and the notice of retirement to be postponed for a time; a very dangerous arrangement. The ostensible partner is liable only to those who, on the faith of the representation that he is a partner, have dealt with the firm. Whether the representation was communicated with the knowledge of the ostensible partner or not makes no difference. (The Partnership Act, 1890, s. 14.)

We will endeavour to illustrate the different rights which a contracting party may have against a dormant and against an ostensible partner.

If at the time you deal with the trading firm of "A and B," you know that C is a dormant partner, and that D is an ostensible partner in the firm, they are of course both liable to you. But if, after you have taken a negotiable instrument bearing the signature "A and B," you *discover* that C is a dormant partner, and that D has been acting as a partner, you may treat C as liable to you on the instrument, for he has been receiving, directly or indirectly, a portion of the profits of the firm, which is the fund to which creditors look for payment. But you cannot make D liable, who was, in the case supposed, *merely* an *ostensible* partner, for the only ground on which he could be liable to you was that you contracted with him and on his credit; and that you did not do, for you did not know him as a partner.

To put it shortly: the man who is really a partner is liable, though he was not known to be a partner; and the man who holds himself out as a partner is liable to those who thought him one, whether he was one or not.

21. The only dissolution of partnership of which we have hitherto impliedly spoken is that resulting from retirement, death or bankruptcy, and where one (or more) carries on the business in the firm name.

Except there is an agreement between the partners to the contrary, the death or bankruptcy of any partner is a dissolution by operation of law. (Partnership Act, 1890, s. 33.) The remarks which follow apply to a voluntary dissolution by act of the parties, whether by the retirement of one or the giving up business by all.

After the dissolution, the authority of each partner

to bind the firm continues so far as may be necessary to wind up the affairs of the partnership and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise. (Partnership Act, 1890, s. 38.) For example, when a bill is payable to the order of a firm, and the partnership is afterwards dissolved, the indorsement of an ex-partner in the late firm passes the property in the bill and authorizes the payment of it.

After a partnership is dissolved, a partner has no longer any right to pledge the credit of the firm. To avoid doing so is his duty to his late co-partners. His *power* as regards the public is as follows:

As regards those who know of the dissolution, a partner is no longer able to bind his former partners; but to those who do not know of it, each partner occupies the same position as a nominal or ostensible partner did before the dissolution, *i. e.* each will be liable to those who may contract upon his credit.

For this reason it is usual upon a dissolution to give express notice of the fact to those who have been customers or correspondents of the firm or have otherwise dealt with it, and to give notice to the world by advertisements in the *Gazette* and other papers, which will be always sufficient as to those who have not dealt with the firm, and will be *primâ facie* evidence that even those who have so dealt knew of the dissolution.

In taking from an ex-partner a bill payable to the order of the firm and requiring the indorsement of the firm, if you desire not merely to have a remedy against the other parties but against the partners in the dissolved firm, you had better have the bill indorsed by each partner or else see that the one who indorses has the authority of the other or others. [The ex-partners need not have any fear as to the order in which they indorse, for they will all be co-sureties (see chap. iv, s. 8), and may bracket their indorsements together describing them as the indorsements of "members of the dissolved firm of ——" *naming it.*]

If a bill be accepted by an ex-partner in the name of the dissolved firm in favour of a person who has no notice of the dissolution, such person has not only himself a right to sue, but his transferee, though taking the bill *with* notice, will have a like right.

22. Notice to one partner is considered by the law to be notice to all; so that a bill improperly accepted by an ex-partner in the name of the dissolved firm in favour of another firm, of whom *one* knew of the dissolution, could not be sued upon by the latter firm.

A dormant or secret partner, whose liability arises solely from the business being carried on on his behalf, cannot after a dissolution be bound by the acts of an ex-partner; for with the dissolution the cause of the liability has wholly ceased.

The estate of a deceased partner is never liable upon contracts made by the surviving partners after his death.

But there is no charm in the word "dissolution;" for as a partnership may be originally created by a common consent of two or more persons, with or without a deed or written agreement; so, if there has been a deed or written agreement between the partners, and such instrument has been cancelled, and even a deed of dissolution executed, yet the partnership may still subsist by a common consent, or, what comes to the same thing, a new partnership may by such consent be straightway created. And after a dissolution, one partner may be so intrusted by his late partners with the management of affairs, that even with those who know of the dissolution, he may be able to bind the late firm by contracts made in their name.

Notes are on the same footing as bills with regard to capacity to contract and to authority, actual and presumed.

Cheques, being bills of exchange drawn on a banker, and needing no acceptance because they are payable on demand, are included in the term "bill" in the Bills of Exchange Act, 1882, save where expressly otherwise provided, and what is said in this chapter will apply *mutatis mutandis* to cheques. So that though a cheque drawn on a banker by a party incapable of binding himself by bills or notes (as, for instance, an infant or a non-trading company formed under the Companies Acts) may be perfectly good as an order on the banker; yet if the banker does not honour it, the holder cannot sue the infant or the corporation upon it. So also if a cheque of another person is made payable *to* the infant or the corporation, the payee may indorse it so as to pass the property and give a right to sue the drawer in

the event of dishonour, but would not, in that event, be liable as indorser (B. E. A., s. 22 [2]).

CHAPTER III.

OF CONSIDERATION.

1. *What Consideration is. Presumption of Consideration.*
2. *Accommodation Bills and Notes.*
3. *Classification of Defences in respect of Consideration.*
4. *Illustration and General Rules.*
5. *Fraud as a Defence.*
6. *Illegality of Consideration as a Defence.*
7. *Holder for value with Notice of Fraud or Illegality.*
8. *What amounts to Notice.*
9. *"Holder in due course"* (B. E. A., s 29).
10. *Presumption of value and good faith* (B. E. A., s. 30).
11. *What constitutes Consideration.*
12. *Lien. Pledging Bills and Notes. Discounting.*
13. *Two kinds of Consideration which enable a man to maintain an Action on a Bill or Note* (B. E. A., s. 29 [3]).
14. *Entire failure of Consideration.*
15. *What constitutes Fraud.*
16. *What constitutes Illegality.*
17. *Agreement controlling operation of Bill or Note. Renunciation.*
18. *Table in part exhibiting Defences in respect of Consideration.*

1. A consideration is some benefit given, or promise made, or loss suffered by the plaintiff to or for the defendant.

It is necessary for a plaintiff suing on contracts or promises, whether made by word of mouth or in writing (unless by deed, *i. e.* under seal), to prove a consideration to have been given for them.

Bills and notes are exceptions to this rule; for where a bill or note is given, a consideration will be presumed to have passed, till the contrary is made probable; and to do this rests with the person sued on the bill.

2. For instance, if A has drawn upon B, and he has

accepted the bill, and A then sues him upon it, it is B's business to allege in his written defence and to show by his witnesses, or by cross-examination of A and those called by him, that the acceptance was given not for value, but for the accommodation of A, and to enable him to obtain money from other parties.

Such an acceptance is called an "accommodation acceptance," and the bill an "accommodation bill." A person who has signed a bill as drawer, acceptor, or indorser without receiving value and to lend his name to another party *to the bill*, is called an "accommodation party." The object of such a bill is not to enable the party accommodated to sue the friend who has lent his name, but to enable the former to obtain credit, or money by way of discount, from a third party.

But consideration is always presumed to have been given for a bill or note. Every party whose signature appears on the instrument is presumed to have become a party to it for value, and every holder is presumed to have given value (see B. E. A., s. 30).

The result of this in the case of an accommodation bill is that, when it has been transferred to a third party, it is presumed that it has been used as was intended, and that value has been given for it. So that, if an indorsee sues the accommodation acceptor or drawer, the plaintiff need not prove that he gave value; it is for the defendant to allege in his written defence and to prove that he himself *received* no value, *and* that the plaintiff *gave* none. If the plaintiff is a second indorsee the defendant must both allege and show that *neither* gave value. The defendant may of course prove, if he can, that the plaintiff gave no value, by cross-examining him or his witnesses.

In short, where the holder sues an immediate party, it is enough for the latter to defend on the ground of want of consideration; but when the holder sues a remote party the latter must further allege want of consideration by all intermediate parties.

Immediate parties are those in direct relation with each other. All other parties are remote.

3. Although consideration is *presumed* to have been given for a bill or note, the defences to an action on a bill or note, in respect of consideration, range themselves under the following heads:

(1) The absence of consideration.

(2) That the bill or note was obtained by *fraud*, *duress*, or *force*.

(3) That it was given in pursuance of an illegal contract, *i. e.* on an illegal consideration.

The cases to which the first of these applies have already been stated.

4. Let us further illustrate the rules as to consideration by looking at an accommodation bill from the holder's point of view.

Accomodation bills and notes being meant for the person accommodated to obtain money upon, the latter can, by indorsing them to another party for value, entitle him to recover both against the party accommodating and the party accommodated.

For instance, suppose a bill accepted gratuitously were indorsed by the drawer in whose favour it was accepted, to a third party *for value*, such party can recover upon the bill as well against the gratuitous acceptor as against the drawer who indorsed it. And, to go one step further, suppose the indorsee for value, instead of being the plaintiff, were to transfer the bill gratuitously, his transferee would be able to stand in his place, and the transferee might successfully sue all the parties to the bill, except his gratuitous transferor.

From this it will be seen that any holder may sue upon a bill or note, who has either himself given value for it, no matter *to* whom, or deduces his title from some one who has; and any party to a bill or note may be sued on it, either if he has received value for it, no matter *from* whom, or if the plaintiff has given value, or deduces title from one who has.

It is for these reasons that, where a person, who has gratuitously drawn, accepted, or indorsed a bill, or made or indorsed a note, is sued upon it, not by the party accommodated, it is necessary for him to allege in his written defence, and to prove, *not only* that it was an accommodation bill, *but* that the plaintiff and those through whom he deduces his title gave no value for it.

The party accommodated may, during the currency of the bill or note, pay its value in money or its equivalent to the party who has accommodated him; in which case the instrument ceases to be an accommodation bill or

note, as may be seen by an example in s. 11 of this chapter.

5. We have now to consider how far a fraud practised on the defendant is an answer to an action on the bill or note.

Where a man is sued on a bill or note which the plaintiff has *himself* obtained by fraud, the defendant, in order to have a good defence, must not only prove the fraud, but that, upon discovering it, he at once repudiated the contract.

The defendant, if he has been defrauded of the bill or note by some one else than the plaintiff, must state this in his written defence, *and also* that the plaintiff gave no consideration for the bill; but there is an important difference between this case and the one above treated of, namely, that when the defendant has proved the fraud or illegality, the plaintiff is then put upon proof of having, in ignorance of fraud or illegality, given value for the instrument, or that some one through whom he took did so. For there is a presumption that value was given for an accommodation bill, which was intended to raise money, but no such presumption with regard to bills tainted with fraud or illegality; and, besides, it would be manifestly unjust to place the defendant in an action on such bills under the necessity of proving that no consideration passed between the alleged defrauder and the plaintiff in the action; whereas nothing can be more fair than to leave the fact of consideration having passed to be proved by the plaintiff, who should know all about it.

The following will serve as examples:

A partner who had authority to accept bills in the firm name for the firm's business, gave an acceptance in that name for a private debt and the bill was negotiated and the holder sued the firm. When the fraud had been proved, it lay with the plaintiff to show that he gave value.

An example quoted by Mr. Chalmers is this:—The holder of a bill indorses it to D to get it discounted. D fraudulently negotiates it to E, who negotiates it to F. F sues the acceptor. Evidence is given of D's fraud. F must prove that he is a holder for value.

6. The same rule applies where the defence is that the bill or note was given for an illegal consideration

and that the plaintiff, the holder, gave no value. When the defendant has proved the illegality, the plaintiff is put upon proof of value. Between immediate parties it is of course enough to prove the illegality. The man who takes a bill or note on an illegal contract cannot sue the man from whom he took it.

7. Though the holder gave value for the bill or note, if he took it with notice of fraud or illegality he is as little able to maintain his action as if he had given no value. If it appears that the person sued was defrauded of the bill or gave it for an illegal consideration and that the holder, the plaintiff, knew it, the plaintiff, whether he has given value or not, cannot succeed except by falling back on some predecessor's title. If he can show that, though he himself took the bill with notice, some previous holder had taken it innocently *and* for value, he can recover.

8. As to what amounts to notice of fraud or illegality. Notice is either knowledge of the facts or a suspicion of something wrong combined with a wilful blindness and abstinence from inquiry.

Mere negligence or mere absence of consideration will not alone be equivalent to notice. But a jury or a Judge, if a Judge tries the case without a jury, may infer notice from absence of consideration or gross negligence coupled with abstinence from inquiry. The notice may consist of knowledge acquired by the plaintiff of the particular facts constituting the fraud or illegality or of information that there was something wrong about the bill or note, though not specifying what was wrong. If anything brought to his knowledge coupled with his conduct, leads to the inference that the plaintiff, when he took the bill or note, believed it was tainted with fraud or illegality, his title will be bad.

Where the holder in taking the bill or note employs an agent, notice to the agent will, in general, be notice to the principal.

9. Let me here quote s. 29 of the B. of Exch. Act and recur to it afterwards in s. 13 of this chapter.

29. (1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions; namely,

(*a*) That he became the holder of it before it was overdue, and

without notice that it had been previously dishonoured, if such was the fact:

(*b*) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.*

(2) In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3) A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

10. The presumption of value and good faith, partly illustrated in s. 5 of this chapter, is thus given in s. 30 of the Act:

30. (1) Every party whose signature appears on a bill is *primâ facie* deemed to have become a party thereto for value.

(2) Every holder of a bill is *primâ facie* deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

11. We will now proceed to consider what constitutes consideration, fraud, and illegality, respectively.

The Act (s. 27) says valuable consideration "may be constituted by any consideration sufficient to support a simple contract."

Thus the payment of money, however small the sum, and the sale of goods, however low the value, so that there is an absence of fraud, will enable the holder to recover against prior parties.

An antecedent debt is a valuable consideration,

* Here we must bear in mind that s. 24 of the Act says that "a forged or unauthorized signature is wholly inoperative, and no right to enforce the bill or give a discharge therefor or to enforce payment thereof against any party thereto, can be acquired through or under that signature, unless the party against whom it is sought to retain, or enforce payment of, the bill is precluded from setting up the forgery or want of authority." But the section is not to "affect the rectification of an unauthorized signature not amounting to forgery."

whether the bill or note is payable on demand or at a future time.

Any risk run at the request of the person who gives the bill or note, may be a consideration for it. If A has given B his acceptance, this may be a consideration for B's acceptance given to A. Cross acceptances may be considerations for each other.

A fluctuating balance may be a consideration when it is in favour of the party to whom a bill or note is given, the consideration increasing or decreasing from time to time with the amount of the balance.

A debt due to another may be a consideration. Thus, if B owes money to C and gets A to draw a bill on him (B) in favour of C, and give it to C, C is a holder for value and can sue A, though A received no value. If A were jointly liable with B, the consideration would of course be equally good.

Where a bill is given for the debt of a third party, it is no defence to an action on the bill that such debt was itself without consideration.

A judgment debt may be a consideration for a note payable at a future day; for the person taking it thereby impliedly undertakes to suspend proceedings on the judgment till the maturity of the instrument.

Where a bankrupt gives a note to a creditor for a former debt, that debt is not a sufficient consideration to support the note, such securities being illegal.

The Bills of Exchange Act, s. 27 (2), is as follows:

Where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

Mr. Chalmers, in his book, illustrates this by the two reported cases which follow:

B owes C £50. In order to pay C, B gets A to draw upon him for £50 in favour of C. C is a holder for value and can sue A, though A received no value. [This is the illustration given above in this section.]

A draws a bill on B payable to his own order. B, to accommodate A, accepts it. Subsequently A gives value to B. A is a holder for value. [This is the illustration referred to above in s. 4.]

The person who has given the value and the person who has received it may never have signed the instru-

ment. For instance, a bill is indorsed to a man gratuitously by a blank indorsement which makes it payable to bearer and he transfers it for value by delivery, that is, without putting his name to it. The man to whom he gives it for value may sue all the persons whose names are upon it, though neither the transferor nor his transferee are parties to the bill.

12. The Bills of Exchange Act, s. 27 (3), says:

> Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

For example, an agent holds for his principal a bill indorsed in blank, and therefore payable to bearer, and wrongfully pledges it to another for less than the amount which it bears. The latter person, called the pledgee, is a holder for value and, if he took the bill innocently, may retain it against the true owner (which in the case of goods wrongfully pledged he could not do), and may sue and recover on it what he advanced.

If the party pledging, called the pledgor, could not himself recover on the bill, the innocent pledgee can only recover what he advanced on it. But if the pledgor could have recovered, the pledgee can recover the whole. In which case, after paying himself, he is trustee for the pledgor of what remains.

So where acceptances are lodged by a customer with his banker as security against a possible overdraft, whenever the balance is against the customer the banker becomes a holder for value to the extent of that balance, and may sue on the bills. And though, when the bills mature, the balance is in favour of the pledgor, yet if they are left in the hands of the pledgee and the balance turns in his favour, he is a holder for value to the extent of that balance, and may sue on the bills and retain what is due to him out of the proceeds.

Where the pledgor could have sued on the bill it is just that the pledgee should do so and pay himself what he has advanced, and hold the balance, if any, upon trust for the pledgor, to whom it must be paid over. But if the bills pledged are accommodation bills given for the accommodation of the pledgor and to enable him to raise money from a third person, the pledgor could not have sued the accommodation party, and so the pledgee can only do so to the extent of his advance.

If he could recover the whole and pay the balance to the pledgor, it would enable the pledgor indirectly to sue the accommodation party,

Pledging differs from discounting. A discounter is a man who buys a bill or note for less than its nominal amount and is entitled to the whole of the proceeds.

13. Let us now recur to s. 29 (3) of the B. E. A., given earlier in this chapter, beginning "A holder (whether for value or not)," &c. There are two kinds of consideration which enable a man to maintain an action on a bill or note; one a consideration given by or for himself, and another a consideration given, not by or for him, to a prior party. If I draw a bill on a man who accepts it without consideration, I cannot maintain an action against him. If he has accepted for value and I endorse the bill away gratuitously, my indorsee cannot sue me. But if A has drawn on B, who gives him a gratuitous acceptance payable to A's order, and A transfers the bill to me for value, I can sue B, though he has received no value, as well as A, to whom I have given value.

In short, I can sue an immediate party if I have given value to him, and in that case only; and the man to whom I transfer, whether *gratis* or for value, has the same right against him. And if I have given value to an immediate party I can sue a remote party though he has received no value; and the person to whom I transfer, whether *gratis* or for value, has the same right against him. In other words, if any intermediate holder (whether his name is on the bill or not) between the plaintiff and the defendant gave value for the bill, that consideration is sufficient to sustain the plaintiff's title.

14. Where a consideration *entirely* fails after the bill or note is given, such failure has the same effect as if there had never been any consideration in contemplation at all. For instance, if you give a man a promissory note in consideration of his promising to be your executor, and he dies first, so that he cannot discharge that office, his representative cannot recover against you on the bill. If, however, this bill has been indorsed to a third party for value without notice, he could, of course, recover on the principles above stated, and so could his gratuitous transferee (see sec. 2).

But to produce this effect there must be a total

failure of that which was contemplated as being the consideration for the bill or note; and a separate and independent wrong, although it virtually renders worthless that which was the consideration for the instrument, will not prevent the person to whom the instrument was given from recovering upon it. For instance, if a bill be given for the price of goods sold and delivered, and the goods are never delivered, there is a defence to an action on the bill; but if, having delivered the goods, the vendor forcibly take them away again, he may recover upon the bill, and the forcible removal will be merely ground for cross-action. In the same way the worthlessness of the goods delivered, or the work done, could not be set up in answer to such a bill, unless it were so great as with other circumstances to amount to *fraud*. But even then, as in the case mentioned in the last preceding paragraph, the bill is good in the hands of a holder for value without notice of the fraud.

15. Where the defendant insists on fraud as a defence, he must, on the discovery of the fraud, have entirely repudiated the contract, and retained no benefit under it.

Fraud is where a man is induced to do or suffer any thing by means of an intentional material misrepresentation, though the party so deceiving him aim at no profit by the transaction. And where a man, in order to influence the conduct of another in business, makes a random assertion (not being a warranty), without knowing whether it be true or false, this is a fraud.

I say "*material*" misrepresentation, for it is not every assertion that a man may make (as, for instance, in vending his goods) which, though intentionally false, will constitute fraud, or will amount to a warranty. Also, the false statement or the conduct (for fraud may be by act as well as words, or by both together) must be such as would be naturally calculated to lead a reasonable man astray.

I say "without being a warranty," for a random warranty of a fact which the warrantor did not know to exist, does not amount to fraud and only gives the right to bring an action if the assertion was untrue; though it does amount to fraud if he knew the warranty to be false.

The means and phases of fraud are so manifold that to attempt much more than a general definition of it would in these pages be impossible. Two instances may nevertheless be mentioned which, though manifest acts of dishonesty, might not strike an unprofessional person as amounting to legal fraud.

Where a debtor is compounding with his creditors, and without their knowledge gives a bill or note to any creditor, either voluntarily or as an inducement to him to execute the deed of composition, this bill or note is void in the hands of the creditor, as being a *fraud* upon the body of the creditors. So also, if the deed contain a stipulation for the surrender of securities, no creditor holding a bill of the insolvent's will be allowed to keep the proceeds in fraud of the creditors, but must refund the money.

Another instance shall be mentioned from the law of suretyship. When one man proposes to give a bill or note in payment of a certain debt owed by another, and the creditor and the debtor have a secret understanding that the money is to be otherwise appropriated (as by payment of a prior debt, or by placing part in the hands of the debtor himself), such a bill will be a fraud on the surety, and void in the hands of the creditor.

16. A plaintiff cannot recover upon a bill given for illegal consideration, if he is obliged to rely on the illegal transaction in making out his case.

Considerations which are illegal, are so either (1) at common law, *i. e.* by the general unwritten law of the land, or (2) by statute.

Considerations illegal at common law may be again divided into (1) such as are privately immoral, and (2) such as contravene public policy.

Under the former head come the consideration for bills, notes, or cheques given for *future* cohabitation, for the rent of apartments knowingly let for the purpose of prostitution, &c.

Under the latter are included the considerations for bills, &c., given upon a contract for the general restraint of trade or business; as if, upon a purchase of the goodwill of a medical practice, or a shoemaker's shop, it were bargained that the persons parting with the businesses should thenceforth altogether cease from curing wounds or making shoes respectively. Though there

would be no objection to a partial restraint, as to do business only within fifty miles of London, or only with certain classes of customers, as wholesome or retail, &c.

So contracts in restraint of marriage (and it should seem though only in partial restraint) are likewise void; and so are contracts to procure a marriage, or to procure the separation of those already married; also contracts to injure the Revenue, to compound a felony or a *public* misdemeanor, or to induce a person to infringe the law.

Contracts with public enemies, as bills or notes in their favour, are also illegal, and all bills and notes are worthless in their hands; so also contracts for obtaining public offices, and all bills, &c., given in pursuance of such contracts are illegal at common law. There are also many contracts illegal by statute, which is the other main division of illegality.

In treating of considerations illegal by statute, it may be convenient first to mention that the offence of usury has ceased to exist, and no contract can any longer be objectionable on that ground, and that gaming contracts, whether written or verbal, are not in general illegal, but are *merely void; i. e.* a man may make a wager or a bet if he pleases upon a lawful game, but having made it, he need not pay. Bills, notes, and cheques, therefore, given in pursuance of such bets or wagers, can only be recovered upon by an innocent indorsee or holder who has taken the bill for value, and in ignorance of the transaction out of which it originated.

As to horse-racing and gaming in general, see 8 and 9 Vict., c. 109, and the Gaming Act, 1892.

If the loser by play or betting on play, having given a bill or note, has to pay the innocent holder, the former can recover the amount against the man to whom he gave the bill or note.

Until the passing of the Gaming Act, 1892, if one man employed another to bet for him and thereby—as he was held to do—authorized the agent to pay losses, the agent, having done so, could recover the money from his principal. Therefore, if the agent drew a bill for the amount on the principal, which he accepted, he had to pay it. The sum sued for was not money won at play, but a sum paid by the agent to a third party at the principal's express or implied request. But the

Act of 1892 says that any promise to repay any money paid in respect of any contract rendered void by the Act 8 and 9 Vict., c. 109, or to pay any commission in respect of any such contract, or reward for services in connexion therewith, shall be null and void and no action shall be brought to recover any such sum of money.

Bills and notes given, whether by a bankrupt or other person, to persuade a creditor to forbear opposing the order of discharge, or to forbear to petition for the rehearing of, or to appeal against, the same, are void, except in the hands of a *bonâ fide* holder for value without notice of the consideration for which they were given.

Stock-jobbing contracts were not merely void, like those founded on gaming or wagering, but were actually forbidden by law; and therefore differences owing by one man to another, or money lent to pay such differences, did not form a good consideration for a bill or note so as to enable a holder cognizant of the transaction to sue upon them. The illegality, however, having been abolished by the Act 23 Vict., c. 28 we need not now consider this question.

No debt can be recovered for selling spirituous liquors in quantities of a less value than 20*s.*, unless delivered at the residence of the purchaser thereof in quantities not less at any one time than a reputed quart; and if any part of the consideration for a bill or note necessarily consists of the price of liquors sold in contravention of this law, the whole note will be void, unless in the hands of an innocent holder for value.

Bills and notes and cheques given to secure the payment of money taken at the doors of an unlicensed theatre, or given by a trader who is a beneficed clergyman, are similarly void in the hands of the parties to the improper transaction.

Where only part of the consideration is fraudulent or illegal, the bill or note is bad altogether.

Where an original bill or note is given on an illegal consideration, a renewed bill or note will be open to the same objections, except the amount be reduced by excluding so much of the consideration of the original bill as was illegal.

So, if the original bill were without consideration, and another bill is substituted for it between the same

parties, the giving up of the first bill is no consideration for the second.

But if the person who has put his name to the bill or note for a gaming debt actually pays the whole, or any part of the sum secured to an innocent holder for value, the former may recover back the money so paid from the person who originally took the security for the illegal consideration.

17. In the cases above mentioned, where the security has been declared by statute to be *void*, it has been provided by the legislature (5 and 6 W. IV, c. 41) that that expression shall be construed as if the Act had said "shall be considered as given for illegal consideration." The effect of this language, as we have seen, is that an innocent holder for value may maintain an action against any party to the bill. But there are other securities rendered *void* by statute, as to which this liberal interpretation does not apply. For instance, the holder of bills and notes given for the sale of an office or to a sheriff for ease and favour, could not sue the party who had given the security on such illegal consideration.

18. Bills and notes, being contracts in writing, come within the well-known rule that such contracts cannot be varied by word of mouth; but extrinsic evidence is admissible to show fraud, absence of consideration or illegality of consideration. What was said when a bill or note was signed or handed over may be very material in this respect. And an agreement, whether written or verbal, imposing some condition to liability on the instrument, is good as between immediate parties. So that if drawer sues acceptor or indorsee sues indorser disregarding the agreement, that disregard may be set up as a defence. Such an agreement will not be binding on a holder in due course who had taken without notice of it; but, if he took with notice, it will be binding.

For instance, if I give a man a promissory note payable on demand as surety for another who has deposited security with him, with an agreement that the note is not to be enforced until my friend's security has been realized, this agreement is binding between me and the man to whom I give the note, and would be binding upon a man who took it for value with notice of the agreement but not otherwise.

Of course if the agreement is written on the instrument, every holder has notice.

[A very common agreement relates to the right of the acceptor of a bill or maker of a note to be allowed to "renew." Sometimes the renewal is to be for part only and for a fixed time; but a simple agreement to renew, without more, means to renew for the same sum and for the same time as the original bill beginning from its maturity. The offer of the renewal bill should be made before, at, or within a reasonable time after the maturity of the bill to be renewed.]

If the bill or note is negotiated overdue, the holder takes it subject to all "equities attaching to it," and an agreement such as has been mentioned, whether written or verbal, will constitute an equity so attaching. If it would have disentitled a holder taking it with notice while current, it will disentitle a holder who takes the instrument overdue, though he is without notice. When a man is offered an overdue bill, he is put upon his enquiry.

For example, an acceptor accepts subject to a verbal condition that the drawer is to do something before indorsing or calling upon him to pay. The drawer negotiates the bill overdue. The indorsee cannot recover against the acceptor unless the condition has been fulfilled.

Under this head we may class the absolute renunciation in writing by the holder, before, at, or after maturity, of his rights against any party. Such a renunciation binds the party who made it and any subsequent holder who took the bill before due with notice, or who took the bill after due without notice. See B. E. A., s. 62, and chap. x, s. 17.

19. The law laid down in this chapter will be partially illustrated by the following table, showing what will constitute a defence, on the grounds treated of, on the part of the acceptor against the drawer and indorsee respectively; but the reader will always remember that when once fraud or illegality are proved by the defendant, the burden of proving consideration and *bona fides* is shifted on to the shoulders of the plaintiff.

Acceptor sued by Drawer may plead	No consideration (*i. e.* accommodation bill).
	Fraud.
	Illegality of consideration.
	Independent agreement.
Acceptor sued by Indorsee may plead	Accommodation bill and no consideration from plaintiff or any of those through whom he has taken the bill.
	Illegality, with notice.
	Illegality, and no consideration (as above).
	Fraud, with notice.
	Fraud, and no consideration (as above).
	Independent agreement, with notice.
	Bill negotiated overdue and fraud, illegality or independent agreement *without* notice.

CHAPTER IV.

OF NEGOTIATION AND TRANSFER.

1. Negotiating a bill or note means so transferring it to another person as to constitute him the holder of the instrument and enable him to recover against the parties to it. This the holder may do at maturity and, even before maturity, in the case of an unaccepted draft dishonoured by refusal to accept. The negotiation may be before, at, or after maturity.

2. There are certain bills and notes which are not negotiable at all and are only valid between the parties, namely those bills and notes which prohibit transfer or indicate an intention that they should not be transferable, as "Six months after date pay to X. Y. only," or "Six months after date I promise to pay to X. Y. not transferable £60." (B. E. A., s. 8.)

A bill or note originally negotiable may cease to be so when restrictively indorsed; a term to be presently explained.

All other bills and notes are negotiable, and are either payable to bearer or to order; for, if they are made, or indorsed, in favour of a particular person without restrictive words, they pass by his order, testified by his signature.

3. A bill or note payable to bearer is negotiated by delivery (B. E. A., s. 31); that is by a transfer of possession, actual or constructive (*ibid*, s. 2).

A bill or note is payable to bearer when it contains

(if a bill) a direction or (if a note) a promise to pay the bearer at a fixed time or on demand. A bill or note is also payable to bearer when it directs, or promises, payment to a person named or his order, or to the order of a person named, or to a person named without mentioning his order, *and* the person named has simply indorsed it by signing his name on the back. It is then said to have become, by indorsement, payable to bearer, and is negotiable by mere delivery. The person delivering it is called the transferor, and the person receiving it the transferee.

4. Indorsements are divided into two classes, "blank" or "general," and "special."

The indorsement above mentioned, consisting of the indorser's name without specifying an indorsee, is called an indorsement in blank; and where the indorser writes over his name a direction to pay a particular person, the indorsement is special. If C. D. writes on the back of a bill or note "Pay E. F.," and writes his name (C. D.) underneath, it is a special indorsement. He may also write "Pay E. F. or order," but the omission of the words "or order" makes no difference in the negotiability of the instrument.

The effect of the special indorsement is that the instrument is only payable to the person named or his order; that is, he must either sign his name and pass the bill or note away or himself apply for the money. And in the latter case he will also be expected to indorse by writing his name in token of discharge.

These indorsements are, as their names denotes, more properly written on the back of the instrument; but they are not bad if written on the face. They may also be written on an *allonge*, which is a paper pasted on the end of the bill to make it longer when the original paper is filled up.

5. Where a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorsee's signature a direction to pay the bill to the order of himself or some other person (B. E. A., s. 34). Thus, when C. D. has indorsed a bill in blank and delivered it to E. F., it is payable to bearer, but E. F. may write over the signature "Pay E. F. or order," or "Pay E. F.," which is the same thing, or may transfer to another by writing over C. D.'s signature "Pay G. H.," and then the bill will require the signature of E. F. in the one case and of G. H. in the other when it is again negotiated.

There are two advantages in this: one that it prevents the bill being payable to bearer and requires a forgery on the part of a thief or a finder, and the other that E. F., the holder, may pass the bill to another person without putting his signature on the instrument. C. D.'s liability is in no way increased or otherwise affected. For this reason an agent sometimes employs this mode of transferring a bill indorsed in blank without incurring personal liability.

6. A special indorsement may also be restrictive; that is, one which enables the indorsee to receive the money for the bill or note without passing the property to him. It is used where the holder desires payment to his agent.

An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed "Pay D. only," or "Pay D. for the account of X.," or "Pay D. or order for collection."

A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorizes him to do so.

Where a restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive endorsement. (B. E. A., s. 35.)

Thus, if the holder wishes his agent D and no one else to receive the money, he indorses the instrument "Pay D on my account," or "for my use," and if it is intended that D may authorize another person to receive the money, the indorsement will be "Pay D or order on my account." D may then indorse restrictively or otherwise, and his indorsee can receive the money but subject to a liability to pay it to the original restrictive indorser. For short, D is merely an agent and the man to whom he indorses (if he has the power to do so and exercises it) is also merely an agent.

The person who has to take up the bill is free to pay D or (where indorsement is permitted) his indorsee, without being responsible for what becomes of the money.

7. An indorsement, like an acceptance, is never complete without delivery. Giving or sending a bill to the transferee, or sending it to his place of business, will, of course, constitute delivery; but there are so many circumstances which constitute *constructive* delivery that the general rule is all that can be given.

An indorsement must indorse away the entire bill. A partial indorsement (that is, one which purports to transfer a part only of the amount payable, or which purports to transfer the whole amount to two or more persons severally, *i. e.* in divided shares) does not operate as a negotiation of the bill (see *B. of Ex. Act.*, s. 32).

Where a bill is payable to order and the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature (*ibid.*).

8. Indorsements are assumed to have been made in the order in which they stand on the bill (*ibid.*); but the presumption of the liability of the person whose name is prior towards him whose name is subsequent may be rebutted by the circumstances, and several successive indorsers may be shown to stand on an equal footing. For example, three directors of a company, wishing to guarantee their banker, indorsed a bill, one signing after the other. It was held that the third could not sue the second, nor the second the first, but that they were all co-sureties, and that any one of them, taking up the bill, was entitled to contribution from the others.

9. An agent, or any other person, who indorses and does not want to become personally liable, should add to his name the words "*sans recours*," or "without recourse to me."

Another way in which the holder of a bill or note indorsed to him *in blank* may transfer it without incurring personal liability is the one already mentioned, namely, by writing over the indorser's signature the words, "Pay G. H. or order," or he may omit "or order." This in no way affects the liability of the blank indorser, but simply converts his blank indorsement into a special one in favour of G. H.; and this is done without the transferor's name appearing on the bill.

The rules given in chap. ii, ss. 13, 14, and chap. xvii, s. 17, for the signatures of agents and of persons acting in a representative capacity, such as executors, directors, and others mentioned, apply of course to indorsements. Such persons, indeed, except directors, have more often to figure as indorsers than as drawers, acceptors or makers. As to corporations or companies, see chap. ii, s. 2; chap. xxi, s. 8.

10. If a bill [or note] purports to be indorsed conditionally, the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not (B. E. A., s. 33). Thus, "Pay E. F. upon my being elected Fellow of St. Paul's College" does not *oblige* the acceptor, or maker, to refuse payment if the election has not taken place.

If two persons, not partners, are payees of a bill or note, both must indorse, unless, of course, one has authority to write the other's name; and if a bill or note is specially indorsed to two, the same rule applies (see B. E. A., s. 32). But an indorsement to more than one severally, *i. e.* for separate parts of the amount, is wholly bad (*ibid.*).

An indorsement may be necessary to the completion of the instrument; as, if a man makes a note payable to himself, or to himself or order, it is not a complete note till indorsed.

11. Bills may be transferred by indorsement, or, if payable to bearer, by delivery, before as well as after acceptance.

A holder, in suing a drawer, acceptor, maker, or early endorser, may omit to allege and prove the intermediate indorsements, which may be struck out, and the case may be treated as though the bill was indorsed to the plaintiff in the first instance. The striking out may be done at the trial.

An indorsement intentionally struck out by the holder discharges the indorser.

An agreement, written or verbal, not to hold the indorser liable, will prevent his indorsee suing him. But a subsequent indorsee without notice of the agreement may of course do so.

In default of acceptance, or, after acceptance, in default of payment, a holder in due course may sue all the parties to the bill, and none of them can set up the

defence of fraud, duress, absence of consideration, or, in general, illegality.

Except where there is an agreement discharging a prior party (see chap. iii, s. 18; and chap. x, s. 17), the only cases where a holder in due course has not a good title against all prior parties to the bill are those rare cases where the security is rendered *absolutely void* by statute. For example, the sale of an office; the stipulation with a sheriff for ease and favour; or securities given to enable a creditor of a bankrupt who has proved his debt to receive more than others.

The effect of the law in these cases is, that the party who gives the bill or note for any of these considerations, whether as acceptor, maker, drawer, or indorser, cannot be successfully sued thereon, but the other parties may be so sued.

It has been already stated that the gratuitous transferee of an accommodation bill may sue any party but his gratuitous transferor, provided *any one* of the prior parties has given value.

12. If a bill which either requires indorsing, or was intended by the parties to be indorsed, be delivered for value without indorsement, and indorsement is refused, the transferee has a right of action against the transferor for not indorsing and to compel indorsement, and the costs would have to be paid by the person refusing to indorse. The personal representatives of the deceased transferor may also be compelled to indorse. I quote the following from the Bills of Exchange Act, sec. 31:—"Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee, in addition, acquires the right to have the indorsement of the transferor."

13. The Bills of Exchange Act, s. 36, says that, when a bill is negotiable in its origin, it continues to be negotiable until it has been either restrictively indorsed or discharged by payment or otherwise. "Negotiable in its origin" means where the bill or note does not contain a direction, or promise, to pay the payee "only," or the words "not transferable," or other words restricting negotiability.

Where an overdue bill is negotiated, the negotiation

is subject to any defect of title affecting the instrument at its maturity, and thenceforward no one who takes it can acquire a better title to it than that which the person from whom he took it had. In fact it is taken on the credit of the transferor, who should indorse it.

Except where an indorsement bears date after the maturity of the bill, every negotiation is *primâ facie* deemed to have been effected before the bill was overdue (*ibid.*). Indorsements are seldom dated, but evidence is always admissible to show when they were written.

According to the rule above given by the Act, an overdue bill is as much negotiable as if it were current; but, if the indorser or transferor could not have sued upon it, neither can the person who takes it (see chap. iii, s. 18).

A bill transferred overdue is said to "come disgraced to the indorsee," who takes it at his peril, and "subject to all the equities with which it may be incumbered."

For instance, suppose a bill, drawn on a person for a gaming debt and accepted, were indorsed by the drawer, when *overdue*, to an innocent indorsee for value, the latter could not recover against the acceptor; for the indorsee took the bill under circumstances of suspicion, and solely on the credit of his indorser.

But, if the same bill had been indorsed in the same way before it was due, the indorsee could have recovered against the acceptor, as well as against the person from whom he took the bill.

In the above case of an overdue bill the person who indorsed it overdue could not himself recover upon it, but if the indorser be able to sue upon the bill, so can his indorsee. As if, for instance, in the above case, the drawer had indorsed the bill to an innocent indorsee for value *before* it was due, and then the indorsee had indorsed to another *after* due, the latter could recover.

But an indorsee of a bill or note overdue takes subject only to the equities attaching upon the instrument itself, and he is not affected by those which are only collateral to it, as, for instance, a set-off due from the payee to the maker of a note.

14. When a bill or note is payable at a fixed date it is easy to see whether it is overdue or not, but in the

case of a bill payable on demand it depends on circumstances whether it is overdue for the purpose of negotiation. The Act only says that the bill is overdue for that purpose when it appears on its face to have been in circulation an unreasonable length of time, and what time is unreasonable is a question of fact (B. E. A., s. 36). This in terms applies both to bills and notes, for "bill" includes "note;" but there is a great distinction between them as regards reasonable time. A note payable on demand is not to be considered overdue unless there be some evidence of payment having been refused, for such notes are often intended to be a continuing security, and interest is often paid on them for many years. Such a note may remain a long while in the hands of the first taker, the payee, but when it is once indorsed the indorsee has a much shorter "reasonable time" in which to present in order to charge *the indorser*. If A, being indebted to B, makes a note in his favour payable on demand with interest, and B after ten years indorses it to C, the latter does not take an overdue bill, and is not concerned with the equities between A and B, but must not calculate on the Court allowing him many months, or even weeks, to present it.

15. Bills may be transferred by indorsement or delivery as well before as after acceptance.

When a person takes by indorsement an unaccepted bill with notice that acceptance has been *refused*, he takes it solely on the credit of the indorser; so that, if the indorser cannot sue the prior parties, neither can the indorsee. For example, A, owing money to C, draws upon B a bill in favour of C or order and gives it to C. A afterwards, and before C has obtained an acceptance, pays the debt to him and cautions B not to accept. C, instead of returning the bill to A, presents it to B for acceptance, which is refused, and then indorses the bill to D with notice of the refusal. D, having taken the bill with notice from C who had been paid and had no right to the bill, stands in no better position than C himself, and so cannot maintain an action against A.

But if the indorsee or transferee have no such notice, he may sue the other parties to the bill, although the person from whom he took it could not.

16. If a man, having indorsed a bill, gets it indorsed again to him, he cannot sue the intermediate indorsers.

A bill may be negotiated back to any party before it is discharged by payment at maturity, and it is not extinguished by being negotiated back to the acceptor, and the party to whom it is so transferred may re-issue it while current. Sec. 37 of the Act says:

> Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

17. If a man to whom a bill or note is indorsed for a particular purpose improperly indorses it to another, the indorsee, if he knew of the breach of trust, cannot sue the real owner of the bill upon it; but, on the contrary, the real owner of the bill may bring his action to restrain its negotiation and have it given up, or to have its proceeds or any bill or goods obtained for it given up.

Whether the trust or, more properly speaking, agency appears on the bill itself, as by a restrictive indorsement such as is mentioned above, or comes to the knowledge of the indorsee in any other way, makes no difference.

18. An indorsement (which, as we have seen [s. 11], may be made before acceptance) may also be made on a blank piece of paper, on which no note or bill has been made or drawn; and the effect of this is to make the drawer liable upon any bill or note afterwards drawn or made on the same paper to the extent of the stamp. The indorser cannot, when sued, set up as a defence that the note or bill was not made or drawn at the time when he signed his name at the back.

19. When a bill or note is originally made, or has become (s. 3) payable to bearer, and is transferred without indorsement, by one who is not a party to it, the transferor is, *as a general rule*, not liable. On the instrument itself he is not liable, for he is not a party to it (B. E. A., s. 58). If he is liable at all it is on the original debt or on the consideration for which the bill or note was given.

If the transferor by delivery merely made a *gift* of the bill or note he is, of course, not liable, for even if he had indorsed, he could not be sued by the transferee. (See chap. iii.)

If a man pays a bill or note payable to bearer on the

purchase of goods without indorsing it, he will not then be liable on the consideration (unless he has agreed or promised so to be); for the man who sells the goods, having taken the bill or note without indorsement, must be presumed to have consented to look to the other parties. In fact, the bill has been exchanged for the goods.

So, if such bill or note were given in exchange for other bills or notes, or for money by way of discount, this is a *sale* of the bill, and the transferor is not liable. By not indorsing it, the transferor refuses to pledge himself to the solvency of the parties.

But if such a bill be paid for a pre-existing debt, as for goods bought ten minutes before, the transferor will, in the absence of any understanding on the subject, be liable; for the creditor is entitled to cash, and it is not to be inferred that he meant to let the debtor off by merely taking notes or bills.

And there are other circumstances from which a jury may infer that the implied contract was that the transferor should be responsible, without indorsement, if the bill or note were dishonoured; as, for instance, if cash were given for the instrument by a friend as a favour, and not by way of sale or discount.

20. A person who transfers by delivery for value, without indorsement, impliedly warrants to his immediate transferee that the bill is not forged or fictitious and that he knows nothing of any fact which renders it valueless. (See chap. vii.)

If there be a single fictitious signature or the transferor knew of the insolvency or incapacity of a party to it, or there is any other breach of warranty, the money given for the bill must be returned; or if any other consideration be given, an action may be brought for the breach of warranty. Whether the transferor has himself received the bill by delivery makes no difference. (See B. E. A., s. 58.)

21. Bills or notes payable to bearer circulate as money. The *bonâ fide* possessor of them is their true owner. Therefore a cheque, bill, or note, payable to bearer passes to any person honestly taking it for value, though the person transferring had no right to transfer.

I say *honestly* taking it; for mere negligence, however gross, will not of itself invalidate his title. Gross

negligence, however, in a man at all acquainted with business, may be sufficient evidence of dishonesty and bad faith.

And these rules apply to the pledging of bills and notes, as well as to their absolute transfer; the honest pawnee obtains a property in the bills or notes, and cannot be compelled, as in the case of goods improperly pledged, to return the bills to their rightful owner.

Exchequer bills, before the blank is filled up, and India bonds, have also, like bills and notes payable to bearer, the qualities of money.

22. When once paid at maturity by the *acceptor* or *maker*, bills and notes are extinguished, and cannot again be negotiated; but if paid *before* maturity, they will still be good in the hands of a *bonâ fide* indorsee for value, who has taken them without notice of their having been paid. They should, therefore, on payment by the acceptor or maker, be given up to them.

An accommodation bill or note paid at maturity by the party accommodated, though he be not the acceptor or maker, cannot be re-issued by him.

If the holder of a bill or note before maturity releases or unconditionally renounces in writing his claim on the instrument against the acceptor or maker, or after maturity brings an action on the instrument, the holder cannot indorse so as to confer a title on anyone who knows of the renunciation or the action.

But, with these exceptions, until the bill is paid by the acceptor, and the note by the maker, they remain negotiable. Therefore, the drawer or indorser who has taken up a dishonoured bill at maturity can, instead of himself suing the acceptor, indorse the bill to another person, who will have that right.

When the acceptor or maker has made a partial payment at maturity, the balance only can be recovered by the holder.

The holder of a note, on which part of the consideration *has been paid*, can only indorse for the *whole* of the balance.

23. The reason why an indorsement must transfer the whole of the bill or note is that otherwise the parties liable on the instrument would be subjected to two actions, whereas they have each only contracted to be subject to one action. This would be the same whether the indorser

reserved one part for himself or transferred one part to one person and the other to another.

In the latter case, neither indorsee can sue; the indorsement passes nothing; but, if part is paid and the indorsement is for the whole of the balance, the indorsee may recover for the balance upon showing that the other part has been satisfied.

Where the indorsement is meant for payment of part only but is not in terms partial and the indorsee appears to be entitled to all the money, he can of course sue on the bill in his own name and will have to pay the surplus of what is recovered to the indorser.

If the indorsement is in terms partial, though it does not give the indorsee a title to the bill it gives him a lien on it, but the action must be brought in the indorser's name.

24. A promissory note for less than £20 payable to bearer on demand must be made payable where it is issued, but may also be payable elsewhere (7 Geo. IV, c. 6, s. 10).

Bank notes for less than £5 are forbidden in England by 7 Geo. IV, c. 6, s. 3.

A bank note is a bill of exchange or promissory note issued by a banker for the payment of money to the bearer on demand, and includes a bill or note which, on the face of it payable to order, is issued with an indorsement which makes it payable to bearer. (See Stamp Act, 1891, s. 29.)

CHAPTER V.

HOW FAR A BILL OR NOTE IS CONSIDERED AS PAYMENT.

1. If a creditor takes an inland bill from his debtor in satisfaction of a debt, the statute of 3 and 4 Anne, c. 9, s. 7, says it is to be deemed full payment if the creditor does not "take due course" to get it accepted and paid.

This statute applies to promissory notes which cannot be accepted and also to a cheque, which is an inland bill, and, being payable on demand, does not require acceptance. The creditor must take due course to get them paid.

If the creditor receives the money on the instrument or is guilty of negligence, the payment operates as a complete satisfaction.

2. It may be expressly agreed that the bill or note is to operate as absolute payment whether it is honoured or not, or such an agreement may be inferred from the circumstances.

But in the absence of such an agreement, the payment is conditional only upon the bill or note being honoured, provided due diligence be used.

3. One effect of this is that, if a creditor takes from his debtor, or from a third person for the debtor, a bill or note payable at a future day, no action can be brought for the debt till that day. The remedy on the debt is suspended till the maturity of the instrument.

If the debt for which the instrument is given is a debt on a previous dishonoured bill, the effect is the same. The remedy on the dishonoured bill is suspended

during the currency of the other and revives on its dishonour.

4. A cheque, being an inland bill, comes within the statute of Anne, and is payment unless dishonoured; that is, the man who has taken a cheque in payment for a debt cannot sue for the debt till he has presented the cheque and payment has been refused.

5. I have spoken of the debt being *discharged* by the negligence of the creditor who has taken the bill or note. This refers to the case where the debtor, giving the bill for the debt, is drawer or indorser, or, in the case of a note, indorser, and is entitled to have the instrument duly presented and to have punctual notice of dishonour. (See chapter xiv.) If the debtor were *acceptor* or *maker* of a bill or note, he cannot be discharged by the creditor's negligence.

I quote the following from *Chalmers on Bills*, chap. v: "When a party to a bill is discharged from his liability thereon by reason of the holder's omission to perform his duties as to presentment for acceptance or payment, protest, or notice of dishonour, such party is also discharged from liability on the consideration for which the bill was given."

Protest is not wanted for inland bills, except in the case of acceptance *suprà protest* or payment *suprà protest*. (See chap. xii.)

6. But, where the instrument is taken as collateral security only and not in payment, it does not prevent the creditor suing at once for the debt. If he does not sue and waits till the maturity of the bill or note and receives the money, it is taken on account of the debt, if equal to or less than the debt; if it is more, the excess of course belongs to the debtor who deposited the security. Where the bill or note given by way of collateral security is *indorsed* by the debtor to the creditor, the latter is bound to duly present it and, in case of dishonour, to give notice of dishonour to the debtor. (See chap. xiv.)

7. If the bill given in payment is in the hands of the creditor overdue and dishonoured, he has his remedy, either on the bill itself or on the consideration, which is the original debt.

The law is the same if the debtor request the creditor to take a *bill or note* of a third person, and the bill or

note is dishonoured; the creditor may sue his original debtor. The same where, *not having the option of taking cash*, he takes a bill of the debtor's agent.

If, however, the debtor merely refers his creditor to a third person for payment generally, and the creditor, having the option of cash, chooses to take that person's bill, the debt is gone and does not revive on the dishonour of the bill.

Where the creditor took the cheque of the debtor's agent and kept it an unreasonable time, during which the financial position of the debtor towards his agent was altered, the cheque was treated as an absolute payment.

8. The creditor who has taken a bill or note in payment and sues for the original debt, or—what is the same thing—on the consideration, has to show that the bill is dishonoured in his hands. And, if the debtor has indorsed, the creditor must prove presentment and notice of dishonour. If the creditor has lost or parted with the bill or note, he cannot maintain an action on the consideration for which it was given. If the law were otherwise, the debtor might have to pay twice over.

If the creditor has parted with the instrument, therefore, he cannot sue at all.

If, however, the creditor has not parted with it but has lost it he may sue all parties to it on giving an indemnity to the satisfaction of the court against the bill or note being outstanding, and so may sue the debtor if his name is on the bill. But this is an action on the bill or note only and not on the original debt, and so, if the creditor lost the instrument before maturity he cannot prove presentment in an action against a debtor who has *indorsed* it to him, and has no remedy against such a debtor at all.

9. We have seen (chap. iv, s. 19) that where a bill or note made or become payable to bearer, is given, though without indorsement, for a pre-existing debt or past consideration, however recent, to a creditor who is entitled to money, the creditor may still sue his debtor if the bill is dishonoured. But if the payment of such a bill be made, not for a past debt, but for an immediate consideration, such as the sale of goods then and there, the seller is supposed to consent to take the

bill in exchange for the goods, and as he has not insisted on indorsement, he cannot sue the buyer if the bill turns out worthless, for the bill has been simply exchanged, with all its faults, for the goods. This is called in legal, though not in commercial, language a sale of the bill. As to the case of a signature being forged, &c., see chap. iv, s. 20.

But a bill may, in the same way, by agreement between the parties, be taken, not only upon such a bargain as that just mentioned, but for a pre-existing debt. In fact, a debtor may, by express agreement with his creditor, give him a bill payable to bearer without indorsing it, so as to be at once, and whether eventually paid or not, a satisfaction and payment of the debt.

10. But though, in the absence of an agreement, a creditor receives only conditional payment of a debt by simply taking the bill or note of his debtor, yet if his debtor be a firm, and he takes the separate note of one of the partners, he will be taken to have discharged the firm, and to rely solely upon the single partner, unless, of course, there were an express agreement that the others should remain liable. One reason is because, in the case of the bankruptcy of the *firm*, or the death of the partner, the creditor might be in a far better position than if he had the whole firm as his debtors, and this advantage amounts to a consideration.

11. By agreement a debt may be satisfied and discharged by other means than payment, as for instance by the delivery of goods, the performance of a service or the relinquishment of a claim. This is called "accord and satisfaction."

It is a rule that a smaller sum cannot be a satisfaction of a greater sum already due; but taking a *bill* or *note* for a smaller sum may be a satisfaction for a larger sum; for the negotiable quality of the instrument confers an advantage, as does also the more effectual remedy afforded by law upon such instruments.

A debtor, owing £125 7*s.* 6*d.* for goods which he had bought, gave his creditor a *cheque* for £100 payable on demand, which the creditor took in satifaction, and it was held a good accord and satisfaction. (9 Q. B. D. 37.)

If a creditor takes the bill or note of a third person in *satisfaction and discharge* of a debt owing by another,

the debt will then be extinguished, and it will not revive on the dishonour of the security; but it is always a question for a jury, or for the judge if there is no jury, whether the instrument was so taken or by way of security or in part payment.

12. If the person who gives a bill or note in payment as being good knows at the time that it is worthless, or fraudulently misrepresents the solvency of the parties to it, the creditor, on discovering the fraud, may at once sue his debtor on his original debt, or, if the bill or note were given for goods, may rescind the contract and resume or claim possession of the goods. If a man offers a worthless negotiable instrument, as for instance a valueless cheque, for goods, the goods pass to him if he thought the instrument good, but do not pass if he was guilty of fraud; in which case the vendor may resume or claim possession.

13. A man who gives in payment a bill or a note payable to bearer (as for instance a country bank note) without indorsing it, warrants that the note is what it purports to be and that he is not aware of any fact which renders it valueless. He does not warrant that the acceptor of the bill or the maker of the note is solvent, but, if it can be shown that he knew of the insolvency, he can be sued for the original debt on the bill or note being returned to him.

Apart from any agreement between the debtor who pays and the creditor who receives a country bank note, the question of whether the payment was absolute or was conditional on the notes being paid depends on the circumstances mentioned above, namely, whether the notes were given for goods sold then and there or for a pre-existing debt or past consideration.

If a man asks for cash for a note as a favour it is not a sale of the note, and if the banker who issued it is insolvent within the time for presentment the money must be returned on the return of the note.

Subject to what has been said above, a country bank note, not indorsed by the person giving it and not objected to by the receiver, passes as money.

14. Where a bill or note is given to a creditor, the presumption is in favour of its being a payment and not a security; but, as between absolute and conditional payment, the presumption is in favour of the latter. In

other words, granted that the instrument was given in payment, the payment is presumed to be conditional on the instrument being honoured if due diligence be used and upon notice being given to the debtor, if drawer or indorser, in the event of dishonour.

15. Where a man has a lien on goods, and he takes a bill or note for the debt, the lien on the goods ceases, and he must give them up to the owner, unless there is an express agreement for him to keep them.

When a renewal bill or note is dishonoured, the right to sue on the old bill or note revives.

Where a man is bound by deed to pay money, the taking a bill or note from him does not extinguish or suspend the right to sue him upon the deed.

If he owe money for rent, and give a promissory note for it, the landlord may still distrain at any time till the note is paid.

If on borrowing money a man covenant to pay it by deed, as by giving a mortgage, and give a bill or note at the same time by way of collateral security, the creditor may sue either on the deed or bill; but where it is not so intended, the right to sue on the bill is merged or swallowed up in the right to sue on the deed.

A cheque is a good tender for the amount it bears, unless objected to as being a cheque and not money.

CHAPTER VI.

OF ACCEPTANCE.

1. Acceptance only applies to bills.

When the drawee irrevocably assents to pay the bill in money when due, he is said to *accept*.

Acceptance in this country of bills, whether inland or foreign, must be by writing on the bill, signed by the acceptor, or some person duly authorized by him in his name; but mere signature without additional words is sufficient. The acceptance must not express an intention to pay in any way but in money. (See *B. of Exch. Act*, s. 17.)

2. Acceptances are divided into general and qualified.

A general acceptance assents without qualification to the order of the drawer, and may be expressed by a simple signature written across the bill, whether preceded or not by the word "accepted." If a place of payment be designated in the acceptance by such words as "payable at Drummond's bank," without adding "and there only," or words to that effect, it is still a general acceptance.

3. A qualified acceptance is one which, in express terms, varies the effect of the bill as drawn.

An acceptance is qualified when it is conditional, *i. e.* when it makes the payment dependent on a condition stated, as "Accepted on condition of a six months' renewal."

An acceptance is qualified when it is partial, as "Accepted for £109 only" or "Accepted payable by monthly instalments of £10."

And an acceptance is qualified when it is local, as "Accepted payable at Coutts' bank, and there only."

An acceptance may also be qualified as to time, as "Accepted payable in six months," when the bill is drawn at three months, and may be qualified also by being given by one or some only of the drawees.

But an acceptance which expresses that the drawee will satisfy the demand by any other means than the payment of money is bad altogether.

4. Where a bill has been drawn and transferred unaccepted and it rests with the holder to get an acceptance, he may refuse to take any kind of qualified accept-

ance, and may at once treat the bill as dishonoured by non-acceptance for want of a general acceptance. If he takes a qualified acceptance it will bind the acceptor and all subsequent parties; but (except in the case of a partial acceptance, of which due notice has been given) it will not bind those who have already drawn or indorsed unless they have authorized it or assent to it expressly or by implication. If, upon receiving notice of it, they are silent, they will be deemed, after a reasonable time of silence, to have assented. Subject to the exception above mentioned (as to a partial acceptance, of which due notice has been given), prior parties who have neither authorized nor in any way assented to a qualified acceptance will be discharged on the holder taking it. (B. E. A., s. 44).

5. "A bill may be accepted before it has been signed by the drawer or while otherwise incomplete" (*Bill of Exch. Act*, s. 18), and a signature intended as an acceptance, and written across a blank stamped paper, is an authority to fill up the bill to the amount covered by the stamp. The person in possession of such a bill is presumed to have authority to fill it up in any way he thinks fit. If the signature of a drawer is wanting he is presumed to be authorized to insert his own or a fictitious name as drawer, and if, when the acceptance is written, the paper is blank, to fill in the body with a draft up to the amount covered by the stamp. In such cases, if the bill comes to the hands of a "holder in due course," he may enforce it and the acceptor will be precluded from denying the existence of the drawer or his capacity and authority to draw or, if the bill was payable to his order, his right to indorse. (See chap. vii, s. 2.)

But if the drawer keeps the bill, he cannot sue the acceptor unless the bill was filled up within a reasonable time and strictly in accordance with the authority actually given. This authority might be to draw in favour of a particular person or for a less sum than the stamp would cover and might be otherwise restrictive. (See B. E. A., s. 20.)

When a bill is drawn payable so many days "after sight," the date of the acceptance should be appended, and the time will count from the day of acceptance. For this reason, if the drawee dishonours the bill by

refusal to accept it and afterwards accepts it, the holder is *primâ facie* entitled to have it accepted as of the date of the first presentment. (See *B. of. Exch. Act*, s. 18.)

6. The holder may likewise treat the bill as dishonoured by non-acceptance, if it turns out that the drawee was incompetent to contract, as by being an infant or a corporation unable to bind itself by an acceptance.

7. None of these acceptances will be complete unless accompanied by a delivery of the bill to the person entitled to it, or according to his direction or by a notice, given by the acceptor after actual acceptance, of the fact of acceptance. So that a man who has accepted a bill may erase the acceptance while it is in his possession, unless, after writing it, he has given such a notice.

But when the bill has once got into the hands of a "holder in due course," "the delivery of the bill by all parties prior to him, so as to make them liable to him, is *conclusively* presumed." (B. E. A., s. 21.) And an innocent holder, though not for value, who derives his title through a holder in due course, has all the rights of such holder. (B. E. A., s. 29.)

When the bill is merely out of the *possession* of a party who has signed it, a valid delivery by him is only presumed and may be disproved. (See B. E. A., s. 21 [3].)

8. An acceptance is not binding when given by any other person than the drawee; thus, if a bill be drawn on John Brown, and be accepted by John Jones, the latter will not be liable on the bill.

But to this there are one or two exceptions. If the bill be drawn on A. B. and C. D., or on a firm of which they are members, such as "B. D. and Co.," if either accepts singly he will become liable on the bill by his qualified acceptance, though the holder is entitled to a different acceptance. (See this chap., s. 6.)

Another exception is in the case of an acceptance *suprà protest*. This may be either by an "acceptor for honour," who is a stranger, or by a referee in case of need, commonly called for shortness a "case of need," who is a person referred to on the bill by some party to it. To explain this, I quote sec. 15 of the B. of Exch. Act:

"The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need,

that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit."

The acceptor for honour and the case of need, when he accepts, give their acceptance S. P., or *suprà protest;* that is, after protest of non-acceptance made before a notary. The acceptor *suprà protest* writes across the bill "Accepted S. P.," sometimes adding "for the honour of A. B." (the drawer or one of the indorsers), and, if no name is mentioned, it is considered to be for the honour of the drawer. I may mention that it is enough if the bill be *noted* before this acceptance, for the protest may be extended afterwards.

I quote from the B. of Exch. Act, s. 65, as follows:

"Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, *and is not overdue*, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *suprà protest*, for the honour of *any* party liable thereon, or for the honour of the person for whose account the bill is drawn."

[Let me here explain the meaning of "protested for better security." It is a step which may be taken where the acceptor becomes bankrupt before maturity. Its only advantage is that it allows of an acceptance *suprà protest;* for the bankruptcy of the acceptor does not, in England, enable the holder to require security from the other parties.]

The drawee himself not being a "party already liable" on the bill (see. s. 65 of the Act), and having refused to accept as drawee, may nevertheless accept *suprà protest* for the honour of the drawer or of an indorser.

A bill may be accepted for honour for part only of the amount for which it is drawn.

Where a bill payable at sight is so accepted, its maturity is counted from the date of noting for non-acceptance, not from the date of the acceptance for honour. (B. E. A., s. 65.)

9. The object of the acceptance for honour is to save to the holder all those rights which he would have enjoyed if the bill had been accepted in a regular manner. The acceptor for honour becomes liable to the holder and to all parties *subsequent to* the party for whose honour he has accepted. But the bill must be presented for payment to the drawee and protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need. This latter presentment must be not later than the day following the maturity where the acceptor S. P. lives in the same place where the bill was protested for non-payment, and it must be *forwarded* for presentment not later than the day following when the acceptor S. P. lives in a different place.

But delay in presentment will be excused by such circumstances as would excuse delay in presentment for payment or non-presentment for payment. (See ch. ix, ss. 15, 16.)

The acceptor for honour, being liable to the holder and all parties subsequent to him for whose honour he accepts, is entitled to be indemnified by the party for whose honour he accepts and all parties prior to him. In case of a draft to drawer's order, indorsed by drawer and by his indorsee to another and again indorsed to the holder, the acceptor for the honour of the third indorser would be liable to the holder and would have recourse to the second indorser and the drawer.

10. The acceptor is bound to know the handwriting of the drawer; therefore in favour of a holder in due course, the acceptance admits the signature and capacity of the drawer, and the acceptor cannot afterwards show that the drawer's signature was forged, or that he was incapable of contracting. Where the bill is payable to drawer's order, acceptor also admits drawer's right to indorse. Whether the drawer's signature was on the bill at the time of acceptance makes no difference.

The acceptor also admits the capacity of the payee to receive, and consequently to indorse, and cannot afterwards show his inability to do so.

But if the bill when accepted is *already indorsed* in the name of an existing person, and the name turns out to have been forged, the acceptor may show this fact when sued on the acceptance by the indorsee, and it will then be a question whether the acceptor meant to give currency to the bill in spite of the forgery, in which case he will be liable upon it.

Where the drawing is by procuration, the acceptor only admits the authority to draw, but not that to indorse.

When the bill is drawn in a fictitious name, the ac-

ceptor undertakes to pay to an indorsement by the same hand.

If the acceptor's name be written by some other person, and the acceptor afterwards gives currency to the bill by admitting it to be his own, or treating it as such, or ratifying the act, he is liable.

11. An acceptor may be discharged by a holder absolutely and unconditionally renouncing his claim against him, and this may be before or after the bill is due. The renunciation must be in writing, unless the bill be given up to the acceptor. But if it be by writing separate from the bill, and before due, it will not affect the right of any person to whom the holder may transfer for value and without notice. (See chap. x, s. 17.)

If a third person cancel the acceptance, the acceptor will only be discharged if it was done by the consent of the holder.

The holder may of course lose his claim on the acceptor by taking a new security in the place of the old one;—so easy is this that, if there are two joint acceptors the act of taking the separate note of one of them may be a renunciation of the holder's rights against the other.

No one can discharge the acceptor but the holder, or some one authorized by him.

12. The question, Who may accept? depends upon the question, Upon whom is the bill drawn? If upon a single individual, who refuses to accept, no one else can accept, unless, as before mentioned, for honour; if upon two or more persons in mercantile partnership, any one partner can (see chap. ii) bind the firm by signing in the name of the firm; but if upon several persons not partners, they must *every* one accept, or the bill may be treated as dishonoured; but those who accept will be bound.

CHAPTER VII.

LIABILITIES OF PARTIES.

(Sections 53—58 of B. of Ex. Act.)

1. *A bill or Cheque is not in England an assignment of funds in hands of Drawee.*
2. *Liability of Acceptor.*
3. *Liability of Drawer or Indorser.*

4. *Stranger signing Bill liable as Indorser.*
5. *Measure of Damages against Parties to dishonoured bill.*
6. *Transferor by delivery and Transferee.*

1. s. 53. (1) A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof,* and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This sub-section shall not extend to Scotland.

(2) In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee.

2. s. 54. The acceptor of a bill by accepting it—

(1) Engages that he will pay it according to the tenor of his acceptance.

(2) Is precluded from denying to a holder in due course—

(*a*) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill.

(*b*) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement.

(*c*) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

3. s. 55. (1) The drawer of a bill by drawing it—

(*a*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken.

(*b*) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

* The words thus far apply to a cheque.

(2) The indorser of a bill by indorsing it—

(*a*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken.

(*b*) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements.

(*c*) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

4. s. 56. Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

5. s. 57. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows—

(1) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

(*a*) The amount of the bill.

(*b*) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case.

(*c*) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.

(2) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.

(3) Where by this Act interest may be recovered as damages, such interest may, if justice require

it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

6. s. 58. (1) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery."

(2) A transferor by delivery is not liable *on the instrument.*

(3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

CHAPTER VIII.

OF PRESENTMENT FOR ACCEPTANCE.

1. *Always desirable, sometimes necessary—notice of refusal.*
2. *Presentment to whom and by whom.*
3. *When excused.*
4. *Dishonour by non-acceptance.*

1. Every bill should be presented by the holder for acceptance without delay, for if the bill be accepted, he has the acceptor's security; and if the acceptance be refused then the prior parties become *immediately* liable.

For this purpose, in the event of refusal, notice of non-acceptance, *i. e.* of dishonour, should at once be given.

Though presentment for acceptance is always desirable, and though upon non-acceptance prior parties are *always* chargeable, yet it is only in case of certain bills that such presentment is absolutely necessary, in order to render liable those who are already parties to the bill.

Where a bill is payable *after sight* presentment for acceptance is necessary in order to *fix* the maturity of the instrument, and, where a bill expressly stipulates

that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment. In no other case is presentment for acceptance necessary in order to render liable any party to the bill. (*B. of Exch. Act*, s. 39.)

But where the holder of a bill such as last mentioned has not time, with reasonable diligence, to present for acceptance before presenting for payment, the delay is excused and does not discharge the drawer and indorsers. (*Ibid.*)

Subject to the provisions of the Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time, otherwise the drawer and indorsers prior to him are discharged.

Reasonable time is determined by the nature of the bill, the usage of trade, and the facts of the particular case. (*Ibid.*, s. 40.)

2. To be duly presented for acceptance, a bill should be presented *by*, or on behalf of the holder, *to* the drawee or to some person authorized to accept or refuse acceptance on his behalf, *at* a reasonable hour, *on* a business day, and *before* the bill is overdue.

When the bill is addressed to two or more drawees, not partners, presentment must be made to them all; but, if one has authority to act for the rest, presentment may be made to him only.

Where the drawee is dead, presentment *may* be made to his personal representative.

Where the drawee is bankrupt, presentment *may* be made to him or his trustee.

Where authorized by agreement or usage, a presentment through the post-office is sufficient.

3. Presentment for acceptance is excused, and a bill may be treated as dishonoured by non-acceptance: (1) where the drawee is dead or bankrupt, or is a fictitious person or a person without capacity to contract by bill (see chap. vi, s. 6); (2) where, after the exercise of reasonable diligence, presentment cannot be effected; and (3) where, although the presentment has been irregular, acceptance has been refused on some other ground. But the holder's belief, however well founded, that the bill will be dishonoured is no excuse for not presenting it. (See B. E. A., s. 41.)

4. If, on presentment for acceptance, the drawee does not accept the bill within the customary time—usually twenty-four hours—the holder must treat the bill as dishonoured if he intends to have recourse against the drawer and indorsers. (See B. E. A., s. 42.)

A bill is dishonoured not only by not being accepted after presentment, but by not being accepted where presentment is excused. (See B. E. A., s. 43.)

Upon dishonour, the holder (unless the bill has been given him for his accommodation) may have immediate recourse to the drawer and indorsers, without presentment, for payment.

Except in the first three paragraphs of this chapter, the language of the Bills of Exchange Act, ss. 39—43, has been closely followed.

As to a bill being dishonoured by being accepted in a qualified instead of a general form, see *ante*, chap. vi.

CHAPTER IX.

OF PRESENTMENT FOR PAYMENT.

1. *Object and necessity of it.*
2. *How to be made.*
3. *Generally unnecessary in order to charge Acceptor or Maker.*
4. *Presentment of Bills payable at sight.*
5. *Day of Presentment.*
6. *By and to whom, and where.*
7. *What is the "proper place."*
8. *Several acceptors. Acceptor dead.*
9. *Presentment through post.*
10. *Presentment at particular place, when necessary to charge Acceptor or Maker.*
11. *Where no due day is named.*
12. *Days of grace.*
13. *Hours and time of presentment.*
14. *Rule does not generally apply to ordinary Note payable on demand.*

15. *When delay in presentment is excused.*
16. *When presentment is dispensed with.*

1. There are plain differences between presentment for acceptance and presentment for payment, both in their objects and their natures. Until presentment for acceptance, the holder of an unaccepted draft has no acceptor liable to him at all; whereas, when the bill is once accepted, if the acceptance is a general one, the acceptor is and remains liable without any presentment for payment at all. Again, speaking generally, presentment for acceptance is personal, for the acceptor, or his agent, must write his name across the bill; while presentment for payment is local, because, wherever the money is, it can be paid and the bill handed over. Further, where the bill is payable after date, presentment for acceptance is uncertain as to time, for it can be at any time the drawer chooses down to maturity, whereas presentment for payment, if required at all, has to be made at maturity.

Except in the few cases mentioned below in which presentment for payment is necessary in order to charge the acceptor or maker, the object of presentment for payment is to charge the drawer and indorsers.

The consequence of a bill or note being not duly presented for payment to the acceptor or maker is, that all the other parties will be discharged from their liability, whether on the instrument or on the consideration for which it was given.

Such being the objects of presentment for payment, the rules relating to it will require attention.

2. When the holder of a bill or note presents it for payment, he should exhibit the document to the person from whom he demands payment (not necessarily to the acceptor or maker), and, upon payment being made, must forthwith deliver it up to the party paying it.

3. It is not in general necessary, in order to charge the acceptor or maker of a bill or note, that it should be presented to him for payment when due or at any time after. An action may at once be brought without either protest or notice of dishonour or even demand of payment.

[But a bill or note, payable at or after sight, must be presented in order to charge the acceptor or maker.

And a bill accepted payable at a particular place *and there only*, and a note made *in the body of it* payable at a particular place, must be presented at that place in order to charge the acceptor or maker. (See s. 10.)]

4. When a bill is drawn payable "*at* sight" or "on demand," which is the same thing, presentment for payment and presentment for acceptance are identical, at all events as to time, and the rule is that a bill payable "at sight" or "on demand" must, in order to hold the drawer liable, be presented within a reasonable time after its issue, and in order to hold the indorser liable, within a reasonable time after the indorsement.

The reasonable time for an ordinary bill of exchange, not intended for circulation, is the day after it has been received. If it has to be posted for presentment it should be posted not later than by post of the day after it has been received, if there is a convenient post, and the person who receives it by post for presentment has the same time in which to present it.

A cheque on a banker is a bill of exchange payable on demand, and the rule as to time for presenting it is in general the same as in the case of an ordinary bill. But there is this difference, that the drawer of a cheque is not discharged by failure in punctual presentment, unless he is prejudiced by the delay, as by the failure of the banker. The drawer is bound to leave a balance to meet the cheque.

Bank notes, being intended for circulation, need not be presented to charge an indorser if they are put in circulation within the time for presentment.

5. When a bill which is accepted generally is not payable on demand, then in order to hold the drawer and indorsers liable, it must be presented *on the day when it falls due.* (B. E. A., s. 45.)

6. Every presentment for payment must be made *by* or on behalf of the holder, *at* a reasonable time *on* a business day, *to* the person designated by the bill as the person to pay or to some one having authority on his behalf to make or refuse payment, and *at* the proper place. But, where the bill is presented at the proper place, and no person can, with reasonable diligence, be found there who is authorized to make or refuse payment, no further presentment is required. (*Ibid.*)

7. The proper place will be (1) any place of payment which is specified on the bill, or (2) *where no place is mentioned*, the address of the drawee or acceptor as given in the bill, or (3) where both of these are wanting, the drawee's place of business if known, or (4) where this is not known, his ordinary residence, or (5) in any other case, the presentment may be to the man himself, if he can be found, or at his last known place of business or abode. (*Ibid.*)

8. To hold the drawer and indorsers liable, if the bill is drawn upon two or more persons who are not partners, the bill must be presented to both or all unless a place of payment is specified; *where no place is specified* and the drawee or acceptor is dead, presentment must be made to his personal representative, if there be any and he can be found. (*Ibid.*)

When a bill is presented at the proper place, and no person can with reasonable diligence be found who is authorized to pay or refuse payment, no further presentment to the drawee or acceptor need be made. (*Ibid.*)

9. Presentment through the post, if sanctioned by agreement or usage, will be sufficient (*ibid.*). When the bill is thus presented, the drawee or acceptor becomes the agent of the holder for giving notice of dishonour, and has the same time for giving it that the holder would have had if he had himself presented the bill.

10. Having stated the cases in which it is necessary to present for payment in order to hold the drawer and indorsers liable, it is proper to state that there are some cases in which presentment at a particular place is necessary in order to charge the acceptor of a bill or the maker of a note. Where a bill is accepted on condition of presentment at a particular place, "and there only," or with words to the like effect, the acceptor is not bound to pay till presentment there. And where a note is expressed *in the body* to be payable at a particular place, as "I promise to pay at Drummond's bank," though without saying "and there only," the maker is not liable till presentment has been made at the place named.

11. Where no day is named on which a bill or a note falls due, it is payable on demand, the same as if so

expressed. "At sight" or "on presentation" is the same as on demand.

12. Where a bill is payable so many days or months "after date" or "after sight," or in any other way than on demand, three days, called days of grace, are always added—unless the bill otherwise provides—to the time of payment, and the bill is due on the last day of grace.

But when the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day.

And when the last day of grace is a bank holiday (other than Christmas Day or Good Friday) under the "Bank Holidays Act, 1871," and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day. (See chap. xxiv.)

Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery.

The term "month" in a bill means calendar month. (B. E. A s. 14.)

A bill at one month, dated the 31st of January, would nominally become due the last day of February, and, with days of grace, would be payable on the 3rd of March.

The above rules apply, as far as applicable, to notes.

If it is desired to allow no days of grace, say, for a bill, "(Six) months after date without grace pay," &c., and for a note put the words "without grace" before "promise."

13. Bills and notes must be presented within *reasonable hours, i. e.* before seven or eight in the evening; and, if payable at a bank, during banking hours.

If the instrument be payable on demand it should be presented or forwarded for presentment within a reasonable time as defined above in s. 4.

14. This last rule does not apply to an ordinary promissory note payable on demand, especially if made

payable with interest; for such instruments are often meant to be a continuing security for money, and parties often go on paying interest upon them for many years. But if the indorser of such a note be sued by an indorsee, the defendant may set up the defence that the note was not presented for payment within a reasonable time, and he may then show to the Court any contract or special circumstances from which it may be inferred that the bill in question should have been presented earlier. If it has not been presented within reasonable time, the indorser is discharged. (B. E. A., s. 86.)

15. Delay in presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of the delay ceases to operate, presentment must be made with reasonable diligence. (B. E. A., s. 46.)

As instances of circumstances which will excuse delay, the following may serve:—Where the place of payment named is in a town which at maturity is besieged, the holder not being within it; and *where personal presentment is necessary* (see s. 7 of this chapter) and the acceptor has suffered an accident which renders him insensible or unfit to be approached on business.

16. But presentment for payment will not be dispensed with, like presentment for acceptance, by the bankruptcy or insolvency of the drawee of a bill, nor by the bankruptcy or insolvency of the maker of a note; for payment may be made by the friends of these persons. Nor will a threat by the drawee not to pay, though made in the presence of the drawer, be any excuse for not presenting the bill at maturity.

The fact that the holder has reason to believe that the bill will on presentment be dishonoured does not dispense with the necessity of presentment. But presentment for payment is dispensed with—

(*a*) Where, after the exercise of reasonable diligence, presentment cannot be effected.
(*b*) Where the drawee is a fictitious person.
(*c*) As regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.
(*d*) As regards an indorser, where the bill [*or note*] was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill will be paid if presented.
(*e*) By waiver of presentment, express or implied.

Paragraph (*c*) means that where the drawer is the accommodated party, or where he has no funds in the hands of the drawee (as where he draws a cheque without money to meet it), you may sue the drawer without presenting for payment.

Paragraph (*d*) explains itself.

Waiver of presentment, referred to in paragraph (*e*) is *express* where a drawer or indorser writes the words "presentment waived," or the like, and is *implied* by his promising to pay, or by his paying a part, after maturity, *with knowledge* that the bill was not presented for payment.

As to indorsed bank notes being circulated instead of being presented, see *ante*, s. 4.

After so much said about presentment for payment at maturity being required, it seems desirable to repeat that, in order to charge the acceptor or maker of a bill or note, no such presentment is necessary except in the cases mentioned above in s. 10, and even then the presentment need not be at maturity, but may be made afterwards.

CHAPTER X.

DISCHARGE OF BILL. PAYMENT, SATISFACTION AND EXTINGUISHMENT.

1. *Dishonour by Non-payment.*
2. *Acceptor has whole day to pay.*
3. *"Payment in due course"—what it is.*
4. *Illustrations.*
5. *Exception in favour of Banker paying Cheque.*
6. *Exception where Bill or Note is payable to Bearer.*
7. *Rights of Drawer or Indorser paying Bill.*
8. *Retiring a Bill. Payment by Stranger. Payment* S. P.
9. *Payment of Bill by Accommodated Party.*
10. *Bill or Note may be paid any number of times before Maturity.*

11. *Bill or Note payable on demand may be paid at any time.*
12. *Payment may be by Money or Paper representing Money.*
13. *Of Proof of Payment.*
14. *Accord and Satisfaction of a Debt on a Bill or Note.*
15. *Acceptor becoming Holder after Maturity.*
16. *Bill Indorsed to one of several Joint Acceptors.*
17. *Renunciation by Holder of his Rights.*
18. *Discharge by Cancellation.*
19. *Renewal Bill.*
20. *Discharge of Acceptor is Discharge of all Parties.*
21. *Miscellaneous matters connected with the subject.*

1. Where a bill or note has been presented for payment, and payment has been refused or cannot be obtained, or when circumstances have arisen which dispense with presentment, and the bill or note is overdue and unpaid, the instrument is dishonoured by non-payment; but where presentment is not dispensed with but there is an excuse for delay, the dishonour does not take place until, at the end of the excused delay, the bill is presented and not paid.

After dishonour by non-payment (as after dishonour by non-acceptance, see chap. viii), the holder, on giving proper notice of dishonour (see chap. xiv), may at once sue the drawer and indorsers of a bill or the indorsers of a note.

By "at once" I mean immediately after the notice has been delivered or, if sent by post, *ought* to have been delivered.

2. But the maker or acceptor has the whole of the day of the presentment in which to pay, and if he pay on that day, though after a refusal, the payment is good, and the notice of dishonour, if given, falls to the ground

3. A bill is discharged (see *B. of Exch. Act*, s. 59) by payment in due course, by or on behalf of the drawee or acceptor. "Payment in due course," means payment made at or after the maturity of the bill to the holder thereof, in good faith, and without notice that his title to the bill is defective. The rule applies also to a note, substituting *maker* for drawee or acceptor.

4. As an instance of the acceptor or maker not being discharged by a payment, though made in good faith, to another than the holder, we may suppose the drawer to have indorsed an accepted bill to his bankers, who give him credit for it, and the acceptor at maturity to pay to the drawer. The acceptor is liable to be sued by the bankers, and may have to pay over again.

Therefore, to have the bill given up on payment is a necessary precaution, though not always a complete one.

If the bill or note be not payable to bearer, that is, if it has required indorsement to make it the property of the holder, the acceptor or maker should be satisfied, on paying the money on presentment, that the indorsement is genuine; for if it be forged or made by an unauthorized person, the payment will be no discharge, and the money may have to be paid over again. The person in possession of such a bill is not a man with a defective title. He has no title at all.

5. To this there is an exception in favour of bankers. When a bill payable *to order on demand* (*i. e.* a cheque) is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by, or under the authority of, the person whose indorsement it purports to be; and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority. (B. E. A., s. 60.)

But a banker who pays a bill payable *after date* or *after sight* on a forged or unauthorized indorsement is not deemed to have paid it in due course and cannot debit his customer with it.

6. To the rule that no payment, save to the true holder, will operate on a discharge, there is an exception in favour of bills or notes made, or by genuine indorsement become, payable to bearer. Not only does a person who has taken such instruments *bonâ fide* and for value from one who has found or stolen them, acquire a title to them so as to be able to recover on them, but a payment made *bonâ fide* and *without negligence*, even to the finder or the thief, will discharge the party paying, though the finder or the thief could not recover on the instrument in a Court of Law.

7. As a general rule, where a bill is paid by the drawer or indorser after dishonour it is not discharged, but merely purchased, and the person paying may sue the acceptor on it, or may re-issue or circulate it again. But see further as to accommodation bills, sec. 9 of this chapter.

But where a man draws a bill payable *to*, or *to the order of, a third party*, which is accepted, and then the drawer pays it after dishonour, he may sue the acceptor on it but may not re-issue it. (B. E. A., s. 59 [2 *a*].)

Where a bill payable to the drawer's order is dishonoured and is paid by the drawer, the latter may sue the acceptor or may strike out his own and the subsequent indorsements and again circulate the bill. (*Ibid.*, s. 9 [2 *b*]. But see further on as to accommodation bills.)

Where a bill is paid by an indorser, he is remitted to his former rights as regards the acceptor and the drawer and prior indorsers, or he may strike out his own and subsequent indorsements and again negotiate the bill. (*Ibid.*)

If a bill be paid by the drawer, the holder may at the drawer's request sue the acceptor on it, and thus reimburse the drawer.

8. Payment by the indorser to the holder is called *retiring* the bill, and the indorser then holds it with all his remedies intact as above stated.

A payment by a stranger, as for instance a friend of the acceptor or maker, need not necessarily be a payment on behalf of the acceptor, so as to put an end to the instrument. For payment *suprà protest* see chap. xii, ss. 6, 7.

9. "Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged." (B. E. A., s. 50 [3].)

The same principle applies to a note.

Therefore, where the party accommodated is, as is usually the case, the drawer, or an indorser other than the drawer, the rule that drawer or indorser paying the bill has his remedies intact and may sue the acceptor or negotiate the bill does not apply. Payment by the drawer is then in fact payment by the acceptor. On the other hand, the acceptor, being obliged to pay such a bill, may sue the party accommodated and recover the amount.

10. Though a bill is discharged when paid *at maturity* by the acceptor or maker, yet it may be paid, even by them, any number of times before it is due, and may be circulated anew between each payment. For example, the acceptor or maker of a bill or note, made or become payable to bearer, and not yet due, may pay the present holder, and straightway for a consideration give the instrument to another. Or if a bill payable to bearer be paid by the acceptor before it is due, and, instead of being destroyed, get lost, and the person finding it give it to a *bonâ fide* holder for value, such last-mentioned holder may recover on it at maturity.

11. A bill or note payable on demand can never be prematurely paid, and therefore a payment on demand of such a bill will be a defence even against an indorsee for value without notice of the payment, for such bills are *prevented by statute* from circulating again. Extreme caution should on this account be used in taking such bills, which may be utterly valueless.

12. Payment may be made in money or by means of paper representing money. Payment of a smaller sum can never be satisfaction of a larger sum. (But see sec. 14 *post*.) If it be made by a cheque, as is often the case, and the bill be given up to the acceptor, and the cheque be dishonoured, the drawer and indorsers will be discharged; for they, when *they* pay, have a right to have the bill given up to *them*, and, if the acceptor has the bill, this is impossible.

It has been held, nevertheless, that an agent, unless ordered to the contrary, is justified in giving up the bill on receipt of a cheque.

The same result would probably be considered to arise if the payment were made in bank notes, and the banker were to fail.

13. When payment is made by the acceptor, it is usual to give a receipt on the back of the bill, for which no further stamp is required. Such a receipt, being seldom given upon payment by other parties, is *primâ facie* evidence that the bill was paid by the acceptor.

A party paying a negotiable bill may insist on its being delivered up to him. Where an acceptor has possession of a bill which has been in circulation after acceptance, payment will be presumed.

When a man is sued upon a bill or note, and he pro-

duces a cheque for the amount of the bill or note drawn by him, and which has passed through his banker's hands, and bears the plaintiff's name at the back, this raises a presumption of payment, unless there have been so many dealings between the parties that it is impossible to say to which the cheque in question relates.

If the receipt be given on a separate piece of paper, it will not be admissible in evidence without a stamp; but though it cannot be seen by the jury in a civil proceeding, yet it may be shown to the witness to refresh his memory, and if he persists in denying the receipt the document will be admissible against him in a criminal proceeding, as, for instance, an indictment for perjury.

After a lapse of twenty years a promissory note payable on demand is presumed to have been paid.

14. There are other circumstances under which a bill or note may be as much satisfied, and the remedies on it extinguished, as by means of payment strictly so called.

Although, as we have seen (sec. 12) part payment by the party owing a larger sum can never satisfy the whole debt, yet such part payment, if accompanied by an act done at the request of the creditor, will amount to such a consideration as is capable of effecting this object. If, for example, it be agreed between the acceptor and the holder of a dishonoured bill for £100, that the acceptor shall pay 6d. in satisfaction of the debt, this consideration will be insufficient; whereas, if to the payment of 6d. it be agreed to add the delivery of an article, though of less value than the balance, the bill will be thereby discharged; and this may be done though an action has been brought. This is called "*accord and satisfaction.*"

15. "Where the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill will be discharged,"—*B. of Exch. Act*, s. 61. The like of the maker of a note.

16. A bill indorsed in blank to one of several acceptors, and in his hands when due, can neither be sued on by the holder, nor transferred by him so as to confer a right against any of the acceptors.

17. When the holder of a bill *at* or *after* its maturity absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged.

The renunciation must be in writing, unless the bill is given up to the acceptor.

The liabilities of any party to a bill may in like manner be renounced by the holder *before, at,* or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation. (B. E. A., s. 62.)

These renunciations are not common. Of course, if the bill is given up to the acceptor at maturity, no one can become a holder in due course afterwards. The best kind of writing would be a memorandum on the bill signed by the holder relinquishing all claim against a party named; for this would be notice to anyone afterwards taking the bill, if still current.

18. As to the discharge of a whole bill or note, or of individual parties, by cancellation, I quote the 3rd section of the B. of Exch. Act.

Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

A cancellation made unintentionally, or under a mistake, or without the authority of the holder is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

Striking out indorsements has been mentioned above, but the commonest instance of cancellation is where a banker cancels the signature of the drawer on a cheque presented for payment. The banker cancels the signature with the intention of paying the cheque, having otherwise no right to cancel it. If he finds he has made a mistake, he must return it, marking it "Cancelled by mistake," and should append his signature or initials.

19. If a bill or note be given by way of payment of a debt, no action can be brought for the debt till the maturity of the bill or note; so, if another bill or note be given by way of renewal of a former bill or note, no action can be brought by the person consenting to the renewal till the maturity of the second bill or note. But the old bill should be given up, or a memorandum

indorsed on it, to prevent it being transferred for value to some one who may sue.

20. Whenever the acceptor or maker of a bill or note is discharged, all the other parties are discharged, for the surety is always discharged by the discharge of the principal.

A judgment recovered against one acceptor of a bill or joint maker of a note, is an answer to an action against the others; otherwise of a judgment against a joint and several maker of a note. (Acceptances, when by more than one, are always joint.)

21. Issuing execution against either the body or goods of one party does not discharge the others; but discharging a party whose body has been taken in execution will operate as a discharge to all those parties to the instrument who stand as his sureties, a relationship which will presently be explained. (See chap. xiii.)

Waiving the right of taking his goods in execution will not have the same effect.

A bill or note is discharged by taking a co-extensive security by deed, but only as regards the party executing such deed; unless the deed were taken from the acceptor or maker; for in that case, of course, all the parties are discharged.

But the security must be strictly co-extensive; for instance, a note will not be discharged by taking the bond of one of two joint *and several* makers for the money. This is a difficult subject, on which advice should always be sought.

CHAPTER XI.

APPROPRIATION OF PAYMENTS.

A few words are necessary on this subject with reference to cases where there may be current accounts, or several debts owing by one party to another.

1. The payment of money is appropriated (*i. e.* applied to a particular debt), at the choice of the party paying.

2. If no such choice were made, then the creditor may choose to which debt the money shall be applied.

3. Where there is an account current, or the parties

treat their transactions as forming one, and the party paying is silent, it is presumed that he intends the payment to apply to the earlier items.

Where the debts are *distinct*, the creditor, in the absence of any appropriation by the debtor, may at any time before action appropriate the payment to any debt he pleases, unless he has previously communicated to the debtor a different appropriation, in which case the latter will be binding.

The same rules apply to a payment by a third party. But where a third party pays money to the creditor for the debtor, the creditor cannot appropriate the payment to a particular debt without the consent of the person paying.

From these rules it will be understood that if A be liable to B upon three bills of £100 each, and pay him £100 without saying for which bill the payment is meant, B may wait to appropriate the payment till such time as he sues upon the other bills. It might be a matter of great advantage to him to be able to exercise this power, because he has all the intervening time to see which of the bills will be satisfied by other parties.

CHAPTER XII.

OF NOTING AND PROTEST, AND ACCEPTANCE AND PAYMENT FOR HONOUR.

1. *Objects of Noting and Protest.*
2. *Who may accept and who may pay* suprà protest.
3. *Meaning of Protest for Better Security.*
4. *Noting and Protest where Notary not available.*
5. *Presentments and Protests necessary to liability of Acceptor S. P.*
6. *Payment* suprà protest *and Notarial Act required.*
7. *Better to become holder than to pay S. P.*

1. For the purpose of having recourse to the drawer and indorsers of an inland bill no noting or protest is wanted. (B. E. A., s. 51 [1].) The only object of noting or protesting such a bill is to get a person, whether already a party to the bill or a stranger, to accept it for honour when the acceptor is insolvent or

when the bill has been dishonoured by non-acceptance or to pay it for honour when dishonoured by non-payment.

2. In chapters i and vi we have spoken of a "referee in case of need," or shortly a "case of need," and in chapter vi, s. 8, the words of the Act authorizing the drawer or an indorser to name such a person are given.

But a person need not be mentioned as a "case of need" in order to intervene in either case of dishonour. Anyone not already liable on the bill may do so, in case of non-acceptance with the holder's consent and, in case of non-payment, anyone whether liable on the bill or not, may do so without such consent.

Let us first deal with acceptance for honour where the bill is dishonoured by non-acceptance or where the acceptor has become insolvent during the currency of the bill.

Section 65 of the Bills of Exchange Act is set out in chapter vi, s. 8, and from that it will be seen that even the drawee, who, having refused acceptance as drawee, is not a party to the bill, may accept it for the honour of any party liable thereon or of the party on whose account it is drawn.

3. The "protest for better security" mentioned in sec. 65 is provided for in s. 51 (1) of the Act, which says:

> Where the acceptor of the bill becomes bankrupt or insolvent, or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

This does not mean, in England, that the drawer or indorsers are bound to find another person to accept for the honour of any of them; but that, when the event has arisen and some one is prepared to accept, he may do so as if the bill had been protested for dishonour by non-acceptance.

4. Noting means the act of a notary making a minute of the dishonour of a bill on the day of dishonour by writing on the bill or on a ticket attached to it.

Protest means a formal notarial certificate attesting the dishonour of a bill.

Where a bill has to be protested within a specified time or before some further proceeding is taken, it is enough to have the bill noted in time, and the protest

may be extended afterwards as of the date of the noting. (See B. E. A., s. 93.) And where the services of a notary cannot be got at the place of dishonour, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour; and this will serve instead of a formal protest.

The following form may be used in the absence of a notary, with the necessary modifications. (See *ibid.*, s. 94.)

> Know all men that I, A. B. [householder] of in the county of in the United Kingdom, at the request of C. D., there being no notary public available, did on the day of 18— at demand payment [*or* acceptance] of the bill of exchange hereunder written, from E. F., to which demand he made answer [state answer if any], wherefore I now, in the presence of G. H. and J. K., do protest the said bill of exchange.
>
> (Signed) A. B.
> G. H. } Witnesses.
> J. K. }

N.B.—The bill itself should be annexed and a copy of the bill and all that is written thereon should be underwritten.

The notarial protest is similar in substance to the above form. When the bill is lost, destroyed, or wrongly obtained from the person entitled to it, protest may be made on a copy or on particulars of the bill. The notary signs the protest.

In the case of inland bills, it is only to the holder of a current bill dishonoured by non-acceptance, or accepted by a person who has since become insolvent, that an acceptance *suprà protest* is of any use; and the noting and the protest are of no use except to give validity to such an acceptance.

5. The liability of the acceptor for honour or *suprà protest* (see chap. vi, s. 9) is conditional upon the bill being afterwards duly presented *for payment* to the drawee who has not accepted it and to its being duly protested for non-payment. (See B. E. A., s. 66.) In short, to get an acceptor S. P. you must first present to the drawee for acceptance and must protest for non-acceptance, and then, when you have got your bill accepted S. P., you must present again to the drawee for payment and must protest for non-payment in order to make your acceptor S. P. liable. You must then

present the bill to him for payment not later than the day following its maturity if his address is at the place of protest, and must forward it for presentment to him not later than that day if he lives in another place. Delay in this presentment, and non-presentment, are only excused on grounds which would be an excuse in the case of ordinary presentment for payment. And, once again, if the acceptor S. P. does not pay the bill, you must protest it for such non-payment. (B. E. A., s. 67.)

6. A bill which has been protested for non-payment may be *paid* S. P. by any party to it or by any stranger *without* the consent of the holder and for the honour of any party to the bill.

Where two or more offer to pay S. P., that one is to be preferred whose payment will discharge the most parties. The payment must be attested by a notarial act of honour which may be appended to the protest, and which declares for whose honour the payment is made. The person who pays S. P. has all the rights of the holder against the party for whose honour the payment is made and all parties liable to him; all others being discharged. If the holder refuses to receive payment S. P., he loses his rights against all parties who would have been discharged by such payment. (B. E. A., s. 68.)

7. But the simplest course for a person who wishes to protect the credit of any party to a bill is to pay the holder and take the bill. It is only if the holder refuses to transfer it that payment for honour need be resorted to.

CHAPTER XIII.

OF PRINCIPAL AND SURETY.

1. *General meaning of the words.*
2. *Suretyship may arise on the Bill or Note, or by independent contract.*
3. *Of the different relations of Principal and Surety arising among the parties to a Bill or Note.—Discharge of Principal is discharge of Surety, &c.*

4. *What indulgence the Holder may grant to Acceptor or Maker, without discharging Drawer and Indorsers.*
5. *Where an apparent Principal is really a Surety, and the Creditor knows it.*
6. *Of independent guarantees that a Bill or Note will be paid.*
7. *Sureties—when discharged by taking a* renewal *Bill.*
8. *Judgment.—Taking composition from Acceptor or Maker.*
9. *Under what circumstances the Sureties will remain liable.*
10. *Where the Principal and Surety jointly sign a Bill or Note.*
11. *Surety who has paid may sue his Principal.—Contribution among co-sureties.—Insolvent Surety.—Surety's right to Creditor's Securities.*
12. *Position of Acceptor for Honour.*

1. Without an elaborate definition of the word "Principal," it will be understood that the principal debtor is the man who is primarily liable as the person himself owing the money; and the surety is, in relation to the principal, one who in some way or other may be obliged to pay the money in default of the principal; *i. e.* the surety is the person secondarily liable.

2. This relationship may attach to a person either by his becoming party to a bill or note, or by an independent contract.

3. First, as to the relation of principal and surety arising upon the instrument itself.

The acceptor of a bill and the maker of a note are the principals, being the persons primarily liable upon the instrument.

All the other parties are sureties to the principals; but each is presumed to be a principal to those who follow him. (For an exception, see chap. iv, s. 8.)

Looking at the matter from the holder's point of view, the acceptor is, at maturity, his principal debtor, and the drawer and indorsers are all the acceptor's sureties; the indorsers are again sureties for the drawer, and the third indorser is surety for the second indorser (the *first* indorser being the drawer if the bill is to drawer's order). If the bill is payable to a third

person, the first indorser will be that person the payee, and the second indorser will be surety for him.

When the acceptor of a bill or maker of a note is discharged, all the other parties are discharged, for the surety is always discharged by the discharge of the principal. (See chap. x, s. 20.)

In the case of a note the relations are the same, the indorsers being sureties for the maker. It makes no difference if the note be given gratuitously. But this is, of course, subject to the rule that no man can sue on a bill or note the person from whom he gratuitously received it.

4. The holder may be as negligent as he pleases in suing, prosecuting his suit, obtaining judgment and issuing execution against the person primarily liable, and he may still, until the suit is barred by the Statute of Limitations, sue the persons liable as sureties if, being parties to the instrument, they have had due notice of dishonour.

But if the holder once, by a binding contract, part with or suspend, for however short a time, the *right* of suing to judgment, or of obtaining the fruits of a judgment against the person primarily liable, those liable as sureties are discharged, unless the loss or suspension of the rights against the principal took place with their sanction; for the surety always has a right to pay off the debt and recover, and, being deprived of this, he is discharged.

But, to effect the discharge of the sureties, the suspension of the remedy against the principal must be by an agreement, which, whether written or verbal, binds the creditor; a mere promise of forbearance without consideration will not have this result.

A bargain may, however, be made not to sue for a certain time, with a proviso that if the money be not paid, the creditor may have a judgment as soon as he might in the regular course. This will leave untouched the liability of the sureties.

There is another way in which the creditor may bind himself to give time to the debtor without releasing the sureties. The reason why the sureties are released by the release of the principal is that, the debt being gone, the surety cannot pay it off and recover against the principal, which the surety has always the right to do

when the debt is due. Therefore if the creditor, when giving time to the debtor, express on the face of the instrument that he, the creditor, reserves his right against the sureties, the latter are not discharged, for, being liable to be sued, they have the right of paying off the debt at any time after it is due and then of suing the principal debtor. This is a very common way of giving time; but the principal debtor, if solvent, does not benefit much by it, for it is no more than saying, "I will give you time directly but may sue you at once circuitously."

5. Giving time, though by a binding agreement, to one of two principal debtors does not discharge the other. But if two persons make a joint and several note to secure the debt of one of them, and the creditor who takes the note knows that, though on the instrument they both appear as principals, one is really a surety for the other, and bargains to give time to the real principal, the other maker, the real surety, is discharged.

6. The same rules apply equally to suretyships, contracted by agreement, independent of the bill. These agreements, usually called guaranties, can only be made in writing, and cannot be made binding, unless they are either made by deed, or there is some consideration.

Where a man guarantees that a bill will be paid by the acceptor, the guaranty holds good though the bill has not been presented for payment, unless presentment for payment is bargained for or the bill, being payable at a particular place *only*, has to be presented in order to charge the acceptor. The reason is that such presentment is not necessary—save in excepted cases—to charge the acceptor. The same rule applies to a guaranty that a note will be paid by the maker.

But if the guaranty is that a bill will be paid by the drawer, the guarantor will not be liable unless the bill is duly presented to the acceptor for payment.

7. The taking a new bill or note from the person primarily liable, payable at a future day, discharges the sureties, for it interferes with the right of the surety *at any time* to pay off the debt, and recover against his principal.

This is the same whether they are sureties on the bill, or by independent contract

If, however, the second bill be taken only by way of collateral security, *i. e.* if the right to sue on the first be not thereby suspended, the sureties, whether on the bill itself or by independent contract, are not discharged.

Taking a new bill from, or suspending the remedy against a subsequent party, never discharges a prior party.

8. The holder of a bill may sue all the parties at the same time, or one after the other, and a judgment against any will not be a satisfaction as to the rest, except when two parties are jointly liable, as for instance two acceptors, in which case judgment obtained against one of them only will be a discharge of the other.

If the holder takes a composition from the acceptor or maker, the other parties are discharged. Part payment, of course, has no such effect.

It is presumed, also, that the drawer and indorsers of an unaccepted draft will be discharged if the holder gives the drawee a longer time to accept than according to the tenor of the draft.

9. But if it be agreed between the holder and the principal debtor that the sureties shall remain liable, they will then (except in the case of judgment) remain so; for the sureties can then at any time pay off the debt, and recover against the principal debtor, and it is on the continuance of this right that the continuance of the surety's liability depends.

But this is subject to the rule that if one person, *jointly* liable, be discharged, the other joint contractors are discharged also. [As to the distinction between *joint* and *joint and several* liability, see chap. xxii, ss. 21, 25, 26.]

[Throughout this chapter the words "principal debtor" may be used as synonymous with "person primarily liable;" the holder will then be, in general, the creditor, and the drawer and indorsers (or, in case of a note, the indorsers) the sureties.]

Again, if the surety consent to the principal debtor having time to pay, the former will not be discharged; so also if *after* the time has been bargained for between the principal debtor and creditor, the surety ratify the course adopted, he will not be discharged, but will have *waived* his right.

Both the prior consent and the subsequent ratification may be verbal as well as in writing. It is very easy to see what will constitute a *consent;* but a surety should be very careful that what he says does not amount to a *ratification*. If the surety says, "I know I am liable," or, "I will pay, if he does not," this will constitute a ratification; but merely saying, "It is the best thing that can be done," has been held not to do so.

10. It sometimes happens that a person, in order to obtain credit, procures another to join him in making a *joint* note, or *jointly* accepting a bill (see chap. xxii, ss. 21, 25, 26). In this case the relation of principal and surety is only by arrangement with one another, and differs from that which appears on the face of the instrument or which is created by an independent contract with the creditor; for as both are *jointly* liable, the discharge of *either* operates as the discharge of both. Whereas, in ordinary cases, the surety may be discharged, and the principal held liable. (But see s. 5 of this chapter.)

11. When a surety has paid an overdue bill he is entitled to have the bill given up to him and he has his remedy against his principal; nay, if he pay by instalments, he may bring a separate action for each instalment.

Where there are several sureties for the whole amount (unlike the indorsers of a bill, each of whom is principal to his successors), each is liable to the creditor for the whole, but, among one another, each is only liable for his share; therefore, if one pay more than the others, he may sue the others for contribution. Where a man is a collateral surety and not a co-surety, the rule of contribution does not apply; as where a man contracts that, if principal debtor and surety do not pay, he will.

If one become bankrupt or insolvent, and can pay nothing, each of the others is, at law, only liable to contribute to the extent of his original proportion; but in a Court where equity is administered, each is liable for a proportion of what is left uncovered by the bankrupt's dividend. If one dies, his representatives will be obliged to contribute.

The surety who has paid is entitled to the benefit of any security which the creditor has taken from the principal debtor. The surety is entitled to stand in the

place of the creditor and to have all the creditor's rights so as to get reimbursed. Nay further, the surety may require the creditor, before suing him, to apply the security towards the discharge of the debt; in fact, to credit him with the security.

12. The acceptor for honour (see chap. vi, s. 8, and chap. xii) is a surety for the person for whose honour he accepts, whether drawer or indorser, and for all parties antecedent to him.

It is not till the bill has been presented for payment to the drawee when due, that the acceptor for honour becomes primarily liable to all parties subsequent to him for whose honour he accepts. When the bill accepted for honour has been presented for payment to the drawee and dishonoured, the holder, after noting or protest, may sue the acceptor for honour.

But the latter is, as between himself and the person for whose honour he accepted and parties antecedent to that person, a mere surety; and therefore, when he has paid the bill, he can compel any of such parties to reimburse him.

And the holder must not discharge the person for whose honour the bill was accepted, or any person prior to him, for then the acceptor for honour, being but a surety, will be discharged.

CHAPTER XIV.

OF NOTICE OF DISHONOUR.

1. A bill may be dishonoured either by non-acceptance or by non-payment.

Dishonour by non-acceptance takes place when the bill is duly presented for acceptance and a proper acceptance is refused or cannot be obtained, or when presentment for acceptance is excused and the bill is not accepted. (See B. E. A., s. 43.)

Dishonour by non-payment takes place when the bill is duly presented for payment and payment is refused or cannot be obtained, or when presentment is excused and the bill is overdue and unpaid. (See B. E. A., s. 47.)

When a bill is dishonoured by non-acceptance, there is of course no acceptor to be sued; when the dishonour is by non-payment, the holder may at once sue the acceptor. But to enable the holder to sue the drawer and indorsers, he is required, except in certain cases, to give them notice of dishonour within a certain time and *before issuing his writ;* if notice be late they will be discharged from liability, not only on the bill itself, but on the consideration for which it was given.

2. The object of the notice is to apprise these parties of the fact of the dishonour and to let them know that they will be called upon to pay. If they do not receive notice of dishonour, they are entitled to assume that the bill has been accepted, and, if accepted, paid, and after the due date, and when the time for receiving notice has elapsed, they will be free to part with any funds which they may have kept to meet the liability.

3. The person by or on behalf of whom notice of the dishonour of a bill or note is given must be either the

actual holder or an indorser *capable of being held liable on the instrument* and of having recourse to the party to whom notice is given.

For example, A. B., having drawn a bill payable to his order upon the acceptor X, indorses it to C, who indorses it to D. The latter, having presented the bill to X, who dishonours it, gives notice a day too late to C. C being discharged by D's neglect, cannot give a valid notice to A. B.

Of course there is no one to whom the drawer can give notice.

Notice of dishonour may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. The drawee or acceptor may be constituted an agent for this purpose, and may give notice of his own act of dishonour.

And a creditor, such as a banker, with whom a bill is pledged as collateral security is an agent who, though not liable on the instrument, is not only entitled but bound to present for payment and give notice of dishonour either to the parties or to his principal, and is responsible for any neglect to do so.

4. The reader will have observed, in sec. 1, that the drawer and indorsers who have not received notice of dishonour are, except in certain cases, discharged from liability both on the bill and on the consideration for which it has been given.

But, where the dishonour is by non-acceptance, and the holder does not give notice of dishonour to the parties prior to him and transfers the bill, the rights of holders in due course subsequent to the omission are not prejudiced by it. (B. E. A., s. 48.) That is, having taken the bill without knowing of the refusal to accept, they may present it again and, in the event of dishonour by non-acceptance or non-payment, they may give notice of dishonour to all prior parties and hold them liable.

And, where the dishonour is by non-acceptance and the holder has *not* omitted to give notice to prior parties, and then the bill at maturity is dishonoured by non-payment, it is unnecessary to give notice of a subsequent dishonour by non-payment, unless the bill has in the meantime been accepted. (B. E. A., s. 48.)

5. Notice given by or on behalf of the holder operates for the benefit of all subsequent holders and of all prior indorsers liable on the bill who have a right of recourse against the party to whom it is given.—*B. of Exch. Act*, s. 49.

In other words, notice by the holder operates for the benefit of all antecedent and subsequent parties. So that if any one of these, having himself received notice and so being liable on the bill, pays the bill and takes it up, he can avail himself of the notice given to any party above him by the holder. If the last indorsee, *i. e.* the holder, give due notice to the drawer, any intermediate indorser who has himself had notice may take up the bill and sue the drawer.

6. Notice given by or on behalf of an indorser who is himself liable on the bill, operates for the benefit of the holder and all indorsers subsequent to the party to whom notice is given. (B. E. A., s. 49.)

The holder of a bill is therefore entitled to avail himself of a notice given by any indorser who has himself received notice. So that if the payee or first indorser has duly received notice and gives notice to the drawer, it is the same as if the holder had given notice to the drawer, and as if each indorser, who had himself received notice, had given notice to the drawer.

7. A party who has himself received notice of dishonour may effectually transmit it to any party or parties prior to him though he may not know that the bill or note has been in fact dishonoured. An indorser who heard from his banker that a bill was dishonoured was held entitled to give notice.

8. As to the form or purport of the notice, it is enacted (B. E. A., s. 49) as follows:

> The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.
>
> The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.
>
> A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

Thus if the notice may apply equally to more than one bill, it lies on the defendant to prove this fact and

that he was misled by it. In case of misdescription of an instrument, as by calling a note a bill, or *vice versâ*, or transposing the names of the drawer or acceptors, etc., it is no objection unless mistake or inconvenience have arisen, which it lies on the defendant to prove.

It is not prudent to give notice by returning the bill; for that is to hand over to the person liable the chief evidence of his liability.

The following is the form given in Mr. Justice Byles' work, and it will at once be seen to be an amply sufficient notice from the holder to an indorser, and may be altered according to circumstances.

No. 1, Fleet Street, London;
26th Sept., 1842.

SIR,

I hereby give you notice, that the Bill of Exchange, dated the 22nd ult., drawn by A. B. of ——— on C. D. of ———, for £100, payable one month after date to A. B. or his order, and indorsed by you, has been duly presented for payment, but was dishonoured and is unpaid. I request you to pay me the amount thereof.

I am, Sir, your obedient servant,

G. H.

To Mr. E. F. of ———, Merchant.

The following shorter forms will also be sufficient.

Notice to drawer of dishonour by non-acceptance.—C. D. has refused to accept your draft on him at three months, dated 1st January, 18—, for £100. Please pay the amount to me. G. H. [*address*].

The like to indorser.—A. B.'s draft at three months, dated, etc., on C. D. for £100, indorsed by you, has been refused acceptance and lies in my hands dishonoured. G. H. [*address*].

Notice to drawer of dishonour by non-payment.—Your draft on C. D. for £100, due 2nd January, 18—, is dishonoured. Please pay the amount to me. G. H. [*address*].

The like to indorser.—A. B.'s draft for £100 accepted by C. D., due 2nd January, 18—, and indorsed by you, is dishonoured. Please pay the amount to G. H. [*address*].

Sometimes dishonour is not expressly mentioned, but a statement that a bill or note is *unpaid*, and that the *charges* or the *noting* come to so much, is a good notice by implication; for these words clearly indicate acceptance (of a bill), presentment, and non-payment, or in the case of a note, presentment and non-payment.

Notices of dishonour are construed liberally, but still the choice of language is important. Where only one bill has passed between the parties, less trouble may be

taken to describe it; for instance if a man has only indorsed to me one bill accepted by X, and I say to the indorser, "I look to you to pay me that acceptance of X which he dishonoured yesterday," it is enough.

A verbal notice given to the wife of the drawer, at his house, was held sufficient, because a man who is liable on a bill must leave someone to answer applications about it when due. A notice left at the man's counting-house or with his general agent in business is enough, but if left with the man's solicitor it is not enough unless the solicitor be also the general agent.

The notice need not state on whose behalf it is given; but if it is stated to be given on behalf of a person who has himself been discharged for want of notice, or is for some reason not liable on the bill, the notice will not bind the receiver (see s. 13 *post*).

9. As to the persons *to* whom notice is to be given. All parties to a dishonoured bill or note who are to be held liable thereon are entitled to receive notice of dishonour, except the acceptor of the bill and the maker of the note, who are themselves the authors of the dishonour.

A man who has transferred by delivery, without indorsing it, a bill payable to bearer—called a "transferor by delivery"—is not liable *on the bill*, to which he is no party. (B. E. A., s. 58 [1].)

And, as a general rule, he is not liable on the consideration for which the bill is given and, where this is the case, he is not entitled to notice of dishonour. But there are cases (see chap. iv, s. 11) where the law will presume the contract to have been that the bill should not operate as payment if dishonoured; as where the bill was given for an *antecedent* debt. Here the man who has transferred the bill must have notice of dishonour or the debt will be wiped out. And there may be an express agreement that the bill shall not amount to payment if dishonoured, and then the transferor, though no party to the bill, will be entitled to notice.

"It is conceived," says Mr. Justice Byles, "that in all cases where, in consequence of the dishonour of bills or notes made or become payable to bearer, a remedy arises on the consideration, the transferor is entitled to notice of dishonour."

If A draw on A, B, and C, notice of dishonour to the

drawer is unnecessary, for, being also an acceptor, he has himself been one of the parties who have dishonoured the bill. (See s. 12 of this chapter as to notice being dispensed with.)

To one who has merely guaranteed the payment of a bill or note, notice need not be given unless he has contracted to receive it, or would be prejudiced by the absence of it.

If a man is liable on a bond or mortgage, or other independent instrument, and also as indorser of a bill or note for the same consideration, he may be sued on the deed without notice of dishonour of the bill.

The following rules are from s. 49 of the B. E. A. :—

Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.

Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found.

Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.

Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.

10. This brings us to the time for giving notice.

The notice *may* be given as soon as the instrument is dishonoured, and *must* be given within a reasonable time thereafter. The rule as to what is reasonable time has now received legislative exposition in the Act in the following words. (B. E. A., s. 49.)

In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

(*a*) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.

(*b*) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day, then by the next post thereafter.

Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post-office.

The principal rule is usually given in words easier to remember, though not quite so complete, as follows; it being always understood that non-business days are excluded from the reckoning:

Where the person giving the notice and the person to whom it is sent both live in the same place, the notice must be given so as to be received the next day after dishonour, or after receipt of notice of dishonour.

Where they live in different places, the notice must arrive as early as a letter would arrive, if posted on the next day after dishonour, or after receipt of notice of dishonour.

These rules are based on the supposition that each party, from the holder upwards, gives notice to the party from whom he has taken the bill, and the time allowed for each notice is dependent on whether the giver and recipient of it live in the same or in different places.

Now, it is plain that if the holder gives notice only to *his* indorser, the power of the holder to sue any other party will depend on whether the indorser is prudent or diligent enough to give notice to the person from whom *he* received the bill, and so on through all the parties up to the drawer.

So that, if the holder has not himself given notice to the person whom he sues, it will be necessary to prove the due transmission of notice through each of the prior parties, and that, too, in proper time—for the diligence of one is not to compensate for the negligence of another; *i. e.* if any party is himself discharged for want of punctual notice, a notice from him can in no case bind another party. If there are three indorsers and the third receives notice late but transmits it quickly and so makes up for lost time, the notice does not bind the second or the first, because the third was discharged by the holder's neglect.

The best thing, therefore, for the holder of a dishonoured bill or note to do is at once to give notice to all the indorsers whose addresses he knows or can ascertain, and, in the case of a bill, to the drawer also; to all parties, in short, except the acceptor of a bill or the maker of a note.

I say "at once," because the rule, as above quoted from sec. 49 of the B. E. A., does not allow the person

giving the notice any longer time to give it to a remote party—say the first indorser—than to an immediate party—say the tenth indorser. It is true that, if the tenth transmitted notice to the ninth and so it went on through all the indorsers to the first, many days might elapse before the notice reached the first. But this does not enlarge the time that the holder, or any party, has for giving notice.

If a party receives notice late through a miscarriage by the post-office, he is, as we have seen, not discharged, and has the same time as the holder had for giving notice to the party above him.

11. It may be here mentioned that when the bill is in the hands of an agent, as an attorney or banker, he is considered as a separate party, as regards time for giving notice. The words of the Act (sec. 49) are:

"Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder."

12. There are some circumstances which excuse delay in giving notice of dishonour and there are others under which the notice is dispensed with altogether.

The B. E. A., sec. 50, says:

Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the notice must be given with reasonable diligence.

Among the examples of circumstances excusing delay collected by Mr. Chalmers from decided cases, are where the holder is misled by the indorser as to his address, or he gives a wrong one and the notice takes longer in reaching him, and where the holder does not know the indorser's address, and time is occupied in making inquiries.

13. The usual way of giving notice, particularly where the parties live at a distance, is by post, for it not only has the advantage of the distinctness of a written communication; but if the letter is properly addressed and miscarries, the sender of the notice does not lose his

rights, and *has merely to prove the posting* of the notice.

In order to prove the sending of the notice, it is necessary to call as a witness the person who posted it, and also the writer or someone else who can speak to its contents; it is therefore as well that the writer should also be the poster. It has been held sufficient proof of posting, however, if the writer of the notice deposes to putting it in a box or on a table for posting, and a servant afterward deposes that he always posts all the letters so placed.

It may here be as well to give this caution to prevent the failure of evidence of notice. If you have made a copy of the notice, or an entry or memorandum of the writing or posting of the notice, of which, from the multiplicity of your business or from other reasons, you have no *independent* recollection, you should bring the copy or memorandum into court, for it will not be sufficient to have refreshed your memory with it previous to giving evidence. If you have an independent recollection, a reference to the copy, memorandum, or entry serves only to add to your credibility, and is not indispensable.

The notice should be sent to the residence or place of business of the person for whom it is intended. If the notice reaches him it does not matter whether it be rightly addressed, and if it be rightly addressed it will be treated as if it had reached him, though he truthfully denies it, for the sender is not to suffer by the failure of the post.

If the notice be sent to the address of the party given on the bill it will be treated as having reached him, though he truthfully denies it; so also if a mistake be fairly made in the address, owing to the illegibility of the writing on the bill.

Notice may be personally served in writing, or may be left in writing at the residence or place of business of the party, or it may be delivered by word of mouth to the party himself or to his clerk at his place of business. In all these cases the person taking the notice must prove its delivery; and if it be in writing, one person may prove the writing and another the delivery.

The notice need not state on whose behalf it is given; but if it is stated to be given on behalf of any person, the receiver of the notice will be discharged from liability

if, for any reason, he cannot be sued by the party on whose behalf the notice is said to be given; for instance, if it be sent by an early indorser, who has not himself had notice and is therefore discharged.

Notice need not be personal, but will be sufficient if given to the clerk of a man of business at his office, or in case of a man not in business, to his wife at his house, for a man who becomes a party to a bill or note is expected to leave someone at his house or office capable of receiving notice. But it would not be safe to give notice to the clerk or wife of a party anywhere else than at his office or house respectively.

14. When we speak of notice of dishonour being necessary, we shall of course be understood to mean that it must be delivered before action brought, so that if there is any doubt about the writ being issued before the letter containing notice would in due course have arrived, the plaintiff will be nonsuited.

15. Having dealt with the general necessity of notice, the time allowed for it, the circumstances that will excuse *delay*, and the mode of delivery, we come to what will *dispense* with notice altogether. The B. E. A., s. 50, says:

> Notice of dishonour is dispensed with—
> (*a*) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged.
> (*b*) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice.
> (*c*) As regards the drawer in the following cases, namely, (1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment.
> (*d*) As regards the indorser in the following cases, namely, (1) where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation.

16. As regards paragraph (*a*), reasonable diligence is question, not of law, but of fact; *i. e.* for a jury, if there

is a jury, and, if not, for the judge as judge of fact. For instance, if the holder finds the place of business of the drawer, or indorser, shut on a business day in business hours and no one to give information, and does not know the private address of the person in question, it is a question of fact whether the inquiries made by the holder to enable him to give notice of dishonour are sufficient to excuse his doing so.

Although a bill is lost, notice of dishonour must be given; for the bill may be paid with or without an indemnity, and may even be sued upon if an indemnity is given to the satisfaction of the Court.

As to paragraph (*b*), "waiver" means a relinquishment of the right to notice. This may be express or implied, and may be by writing or by word of mouth. For instance, if a man indorses a bill "John Jones, notice of dishonour waived," it is a written waiver as to *that* indorser. So, if a drawer or indorser says to the holder "I will pay that bill if it is dishonoured; you need not send me notice."

But the question of waiver mostly arises in cases where the Court is asked to infer it from circumstances, as where a man says "I will call at the acceptor's and see if the bill is paid at maturity;" which was held to amount to a waiver of notice. Or where a man says "I will pay the bill though I have had no notice;" for the waiver may be after, as well as before, the omission. An agreement to dispense with notice of course has the same effect as regards the parties to it.

I may here mention some circumstances which have been held to be not so much proof of waiver as raising a presumption that notice has actually been received.

A promise to pay and a part payment have been treated as evidence of notice having been received; but a promise made while the bill is current to pay it if dishonoured is quite consistent with an intention to insist upon notice of dishonour.

Where a defendant said to one who might have been entitled to sue "I have been cheated out of the bill and do not intend to pay," and where the defendant said that he did not intend to rely on the *informality* of the notice, notice of dishonour was in both cases presumed.

A promise to pay, in order to be binding as a waiver of notice, must be made with full knowledge of the facts

For instance, where an indorser promises to pay a bill which has been unpaid at maturity, not knowing that it had been previously dishonoured by non-acceptance, as was the fact, it is no waiver. But if the promise is made under a mistake of law, it may still operate as a waiver; for all are presumed to know the law.

The admission of liability need not be made to the plaintiff who sues on the bill, but, though made to a stranger who is not a party to the bill, it will have the same effect.

As regards paragraph (*c*), the drawer and the drawee may be the same person, as where John King trades under the name of John King and Co. and draws a bill on John King and Co.; so also in the case given above where A, a partner in the firm of A, B, and C, draws on that firm, for, if the bill is dishonoured, he is the author of the dishonour, and is not entitled to notice.

The drawee may be a fictitious person, as when a company drew on "the cashier," in which case the instrument may be treated as the promissory note of the company, which is not entitled to notice.

The drawee may have no power to contract by bill, as in the case of an infant or of a corporation or company not formed for the purpose of trade and not having express authority to bind itself by negotiable instruments. A party who draws on such an infant or such a company has no right to notice.

The drawer may be the person to whom the bill is presented for payment, as where he is the executor of the drawee, and, if the drawer himself dishonours the bill, notice to him is superfluous.

The drawee may be under no obligation to the drawer to accept or to pay the bill.

The simplest instance of this is where a man draws a cheque on a banker when there is nothing to the credit of the drawer, or not enough to meet the cheque. The banker is under no obligation to pay and the drawer may be sued without receiving notice of dishonour. So where a man draws a bill payable after date on a relative trusting only to his good nature to accept or pay.

So also where the bill is accepted for the accommodation of the drawer, who has, at no time during its currency, any effects in the hands of the acceptor.

Countermand of payment needs no illustration. It often happens with cheques and sometimes with other bills.

As to paragraph (*d*), it will be observed that the fictitious character of the drawee or his incapacity to contract do not affect the indorser's right to notice unless he was aware of the fact when he indorsed the bill.

Under the same circumstances as are above mentioned concerning the drawer, an indorser may be the person to whom the bill has to be presented and who dishonours it. And the bill may be drawn and, if accepted, may be accepted, for the accommodation of the indorser.

17. The reason why neglect to give notice discharges from all liability each party who should have received notice, is that, after a reasonable time, such parties may fairly presume that the bill or note is satisfied, and may part with any funds they may have kept to meet it.

The drawer in particular would be injured if he were compellable to take up the bill without notice of dishonour, for the drawer is presumed to have effects in the hands of the drawee; and if the drawer have timely notice of dishonour (whether by non-acceptance or non-payment), he may be able to withdraw his effects from the hands of the drawee or acceptor.

Those parties only are entitled to notice of dishonour who, when called upon to pay, may have any right to recover against any other party to the instrument. It is because they never come within this rule that an acceptor or maker are *never* entitled to notice, being always, as regards the holder, primarily liable.

This rule is the basis and serves as the explanation of nearly all the cases mentioned in paragraphs (*c*) and (*d*) of section 50 of the B. E. A., in which notice of dishonour is dispensed with.

By this rule it is that if the drawer has *at no time* during the currency of the bill had effects in the acceptor's hands, *i. e.* if the bill was accepted for the drawer's accommodation, and has always remained an accommodation bill, the drawer need not have notice of dishonour, for there is no one whom he can sue on the bill.

But if the bill was for the accommodation of the *acceptor*, the drawer will be entitled to notice, for, on paying the bill, he can sue the acceptor.

So, if the bill were for the accommodation of an indorser, the drawer will be entitled to notice, for, on payment, he can sue the indorser.

In case of a note, a corresponding state of facts can hardly occur.

For the like reasons it is that the drawer is not entitled to notice of dishonour where he has drawn the bill upon himself, or upon a fictitious person or one who cannot contract, or he has himself dishonoured the bill, or has countermanded payment.

And similarly the indorser has no right to notice where he has himself come to stand in the drawee's place and dishonours the bill, nor where the bill was for his accommodation.

The drawer being assumed to have effects in the hands of the drawee and to have drawn the bill against those effects, the rule as to the drawer being entitled to notice of dishonour is sometimes expressed by saying that he is entitled to notice when he has a reasonable expectation that the bill will be honoured; otherwise not.

For example, the drawer, having supplied the drawee with goods, and having drawn a bill on him payable when the credit, if any, has expired, is regarded as having a reasonable expectation that the bill will be honoured; otherwise, if the draft would mature before the credit had expired, and the drawee had no other effects of the drawer. So, if the drawer had, during the currency of the bill, a fluctuating balance to his credit with the drawee, notice is necessary.

So, where B owed money to A, and said to A, "C owes money to me; draw on him," and A drew on C for the amount and C accepted but did not pay, it was held that A, the drawer, was entitled to notice of dishonour from the holder of the bill, because A had a reasonable expectation that the bill would be honoured, and after the maturity of the bill would regard it as paid, and refrain from pursuing his remedy against B. The "reasonable expectation" in this case would not have arisen if C. had not accepted; but, when he had once done so, he was, as between himself and A, under an obligation to pay the bill.

Thus it would seem that the drawer, having reasonable expectation of honour, the drawer having effects in

the drawee's hands and the drawee being "under an obligation, as between himself and the drawer, to accept or pay the bill"—which is the language of the Act—all come to the same thing.

The fact that the drawer or the indorser whom it is intended to sue has reason to believe that the bill will be dishonoured (as when the acceptor or maker has announced that he cannot pay, or is dead or bankrupt) does not dispense with notice of dishonour. Nor does the fact that the drawer or the indorser know that the bill *has* been dishonoured.

18. But the circumstances above mentioned as dispensing with notice of dishonour are none of them apparent *on the face* of the bill, but mostly result from the relations of the parties, which may or may not be accurately known to the holder on whom the burden of proving them will lie. It is therefore advisable not to rely on the excuses above mentioned but to give notice, where practicable, to all parties except the acceptor of a bill and the maker of a note.

Not only this, but it is desirable that the holder should give the notice to as many as possible within the same time as he has for giving notice to his immediate indorser. For it has been pointed out that, if the holder only gives notice to his immediate indorser and the notice is not regularly transmitted, the parties to whom it is not transmitted in time are discharged; and it has also been shown that if any one of the series does not get notice in time he is not only discharged himself but cannot pass the notice on, however quickly he does it; for the notice, to be effective, must come from a party who is himself liable on the bill. For instance, the holder of a bill did not give notice to the 11th indorser; but three days after dishonour the 11th indorser paid it and at once gave notice to the 8th indorser, who received the notice earlier that if it had been transmitted by each indorser to the one above him. The 11th indorser, having been himself discharged for want of notice, and having paid gratuitously, was incapacitated from giving a valid notice to any other party, and his diligence in communicating made no difference. So the 11th indorser failed in his action against the 8th indorser.

And even supposing the due transmission takes place, the evidence required to trace the notice through its

course to a remote party may be difficult and expensive to procure.

For all these reasons the holder should give notice at once to as many parties as possible.

When he has done so, inasmuch as his notice operates for the benefit of all the indorsers to whom he has given it, it may suit one of them, as being now liable on the bill, to take it up and save the holder the trouble of suing. This furnishes another reason for the course above suggested.

Here I may add that a party so taking up the bill may sue on it at his leisure and need not proceed at once.

CHAPTER XV.

OF UNAUTHORIZED SIGNATURES AND ALTERATIONS.

1. *Forged or unauthorized Signature inoperative. Signature by Procuration.* B. E. A., ss. 24, 25.
2. *Meaning of taking "through or under" a Signature.*
3. *Exception in favour of Bankers in case of Cheques.*
4. *Authority to sign—how given.*
5. *Authority to fill up an incomplete Document.*
6. *Parties* prior *to filling up not bound unless it is done in reasonable time and in accordance with Authority.*
7. *Issue. Material Alteration after issue.*
8. *Material Alteration explained.* B. E. A., s. 60.
9. *Material Alteration distinguished from correction of error.*
10. *Burden of Proof as to Alteration.*

1. *Subject to the provisions of the Bills of Exchange Act*, a forged or unauthorized signature on a bill, note or cheque is wholly inoperative, and no right to retain the instrument, or to give a discharge for it, or to enforce payment of it against any party to it can be acquired *through or under that signature*, unless the party against whom it is sought to retain or enforce payment is precluded from setting up the forgery or want of authority.

But this does not affect the ratification of an unauthorized signature not amounting to a forgery. (See B. E. A., s. 24.)

A signature by procuration operates as a notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority. (*Ibid.*, s. 25.)

2. First let us illustrate sec. 24. If a man takes a bill of exchange or a promissory note *through* a forged indorsement he cannot recover on it and the person who pays him cannot take credit for the payment. If a bill is payable to the order of John Jackson and another John Jackson indorses it to the holder, he cannot retain the bill or recover on it or give a discharge for it. If a bill is payable to the order of a firm and a partner wrongfully indorses it with the firm name and pays it away for his private debt and the holder gets paid by the acceptor, the money may be recovered from the holder. The holder of a bill specially indorses it to A and sends his servant with it, who loses it and the finder forges A's name on it and passes it to B, a holder for value, who pays it into his bank and gets it paid and draws the money. The original holder who indorsed to A can recover the money from B's banker.

But if a bill is originally, or has by indorsement become, payable to bearer, and a holder, in order to get me to discount it, forges the indorsement of a wealthy person, this does not affect my right to recover against the real parties to the bill; for I have not taken *through* the forged indorsement.

3. The words "subject to the provisions of this Act" indicate an exception to be found in s. 60, which enacts that a banker who, in good faith and in the ordinary course of business, has cashed a cheque on which the payee's indorsement, or any subsequent indorsement, is forged or written without authority, is to be deemed to have cashed it in due course. This means that he can debit his customer with the amount, leaving him to recover against the person who presented the cheque.

This provision does not apply to any bills except cheques; so that the banker cannot debit his customer with his acceptance payable at the bank where the holder who presents it takes *through* a forged indorsement.

4. What amounts to forgery of signatures and of other parts of an instrument will be afterwards explained.

We now come to unauthorized signatures. Every forged signature is unauthorized, but every unauthorized signature is not forged.

No writing is required to authorize one person to write the name of another, nor is any special form of words necessary.

5. The same may be said of an authority to fill up a document already signed; for which, indeed, under certain circumstances, no words are wanted at all.

While a bill or note is incomplete, the person in possession of it is presumed to have authority to fill it up in any material particular in which it is wanting.

For instance, if I write my name across a bill stamp by way of acceptance, and hand it to my creditor without instructions, I have given him authority to insert the date, the period of currency, the amount up to what the stamp covers, and to add his name as drawer, or get another person to do so (see B. E. A., s. 20 [1]); and when all this is done I am, as the lawyers say, "estopped," which means precluded, from disputing the bill as drawn. So if I fill in any of these particulars he may fill in the rest.

The name of the payee is often left blank, to be filled in afterwards.

If the person to whom I give the blank acceptance exceeds my *express* directions which I give him, as that the bill is not to be at less than three months, he is responsible to me; but when he has once transferred the bill for value to a person who has no notice of the fraud, I must honour the bill.

So if I sign a blank cheque (the penny stamp on which serves for any amount) and part with it, giving directions limiting the amount with which it is to be filled up, and the person to whom I give it, or someone who gets it from him, fills it up with a higher amount, my banker may pay it and debit me with it.

6. But, in order that an instrument when completed may be enforcible against a person who became a party to it *before* its completion, it must be filled up within a reasonable time and strictly in accordance with the authority given. (B. E. A., s. 20 [2].) Thus I sign an acceptance across a bill stamp which covers £100 and give it to a man who is to draw on me for £50 only and he fills up the paper with a draft for £100, he can

maintain no action against me, nor can anyone who took from him with notice or without value. So, if my blank cheque were filled up with an unauthorized amount and my banker dishonoured it, the person who wrongfully filled it up could not maintain an action against me on it, and no one who took it from him with notice or without value or after dishonour could do so.

7. The acts of filling up particulars that are wanting in the bill are not *alterations* of it, because the bill is not complete till all these particulars are filled in; but, when the bill is once completed in form and *issued*, a material alteration, unless made with the consent of all parties liable on the bill, will render the bill void, except as against a party who has himself made, authorized, or assented to the alteration, and subsequent indorsers.

"Issue" is defined as being "the first delivery of a bill or note, complete in form, to a person who takes it *as a holder*." If a creditor draws a bill payable to his order on his debtor, who accepts and delivers the bill to the drawer, it is *issued* and cannot be altered, but it could have been altered before acceptance, because it had not been passed to any holder. An accommodation bill or note is not issued till it comes into the hands of someone who has given value for it. Thus if three persons become parties, as drawer, acceptor, and indorser, for the benefit of a fourth, to whom they hand the document, it can be altered while in the hands of the latter, because it is not yet issued.

8. We now come to what a material alteration is. It is anything that alters the operation of the bill and the liabilities of the parties, whether by making them greater or less. A material alteration is now defined by s. 64 of the Act, and the law regarding it stated in the following terms:

> Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers.
>
> Provided that—
>
> Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its *original tenor*.
>
> In particular the following alterations are material, namely,

any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

9. A mere correction of an error or omission done to make the bill what it was intended to be does not render it void, as where the payee's name is left blank and the holder fills it in; so, where a promissory note having been signed by one maker and money advanced upon it by the holder, another who had *previously agreed* to become a maker or surety for the first maker signed the note when in the hands of the holder, this act was held not to make the instrument void. And, by s. 12 of the Act (given in chap. xxii), where a bill payable after date is undated, or the acceptance of a bill payable after sight is undated, any holder may insert the true date of the issue or acceptance. If a wrong date is inserted by the holder honestly, the bill is payable as of that date, and, whether the wrong date is honestly inserted or not, the bill is good in the hands of a holder in due course, as if the date had been the true date.

10. Where an alteration appears on the face of a bill or note, it lies on the plaintiff who sues on it to show under what circumstances it was made, so as to satisfy the Court whether it was a mere correction of an error, or was made before the instrument was issued (see above, sec. 7), or was a material alteration made after the bill or note was complete, and, if so, whether with the consent of all parties, or not.

It is therefore advisable that persons drawing a bill or making a note should make every correction, as far as possible, explain itself, as by passing the pen through a word meant to be omitted, instead of erasing or completely obliterating it.

And if it is impossible to do this, as in the case of the acceptor refusing to accept unless the date or time of currency be altered, it is advisable in practice either to get a new stamp and draw the bill afresh, or, at least, to append a note at the back of the bill, signed by the acceptor, stating the alteration to have been at his request, and before acceptance.

With reference to the amount, if a change should be required, we have already seen under the head "qualified acceptance" (chap. vi) that the acceptor may reduce the amount by accepting for part only.

As to the cancellation of a whole bill or note, or of an individual signature, see *antè*, cap. x, s. 18.

In connection with this subject, see the following chapter.

CHAPTER XVI.

OF FORGERY AND FALSE PRETENCES.

1. Forgery is the counterfeit making or altering of any writing with intent to defraud, and the forgery of bills or notes is a felony, the maximum punishment for which is penal servitude for life.

2. By 24 and 25 Vict., c. 98, s. 22, "whoever shall forge or alter, or shall offer, utter, dispose of or put off, knowing the same to be forged or altered, any bill of exchange or any acceptance, indorsement, or assignment of any bill of exchange, or any promissory note for the payment of money, or any indorsement or assignment of any such promissory note *with intent to defraud*, shall be guilty of felony," punishable as above mentioned.

The next section forbids, under a like penalty, the like acts with regard to a "warrant, authority, or request for the payment of money;" and these terms include a cheque.

3. By the 24th section, whoever *with intent to de-*

fraud, shall draw, make, sign, accept or indorse any bill of exchange, or promissory note or any undertaking, warrant, order, or authority for the payment of money [this includes a cheque], or an order for the delivery of any bill, note, or security for money, *by procuration or otherwise*, is guilty of felony and incurs the like penalty as also he does by uttering, &c. Until this enactment, the acting under a fraudulent pretence of procuration did not amount to a felony.

4. The 25th section makes it a felony to fraudulently obliterate or alter the crossing of a cheque.

5. An offence akin to forgery is created by the 24th and 25th Vict., c. 96, s. 48, under which whoever *with intent to defraud or injure* any other person, shall, *by violence or restraint, or threat* of violence or restraint, *or by accusation or threat of accusation* of any treason, felony or infamous crime, compel or induce any person to execute, make, accept, indorse, alter *or destroy* the whole or any part of any valuable security or to put the name of himself or any society, partnership, or corporate body on any paper or document for the purpose of turning it into a valuable security, incurs a punishment, of which penal servitude for life is the maximum.

6. By section 90, whoever, *with intent to defraud or injure* any other person, shall *by any false pretence*, cause or induce any other person to do the like acts as are mentioned in the last preceding paragraph, is punishable with three years' penal servitude.

By sections 88 and 89 of the last-mentioned Act whoever shall, *by any false pretence, obtain* from any person a valuable security *with intend to defraud*, or shall with the like means and object cause a valuable security to be delivered to another person, may be punished by three years' penal servitude.

It will be seen that the law makes a great distinction n respect of punishment between the cases of obtaining a signature, etc., by fraud and getting the same hing by violence. As to what is a false pretence, it would be improper here to give any definition or adequate description. It is as well, however, to note that a false pretence may be by acts and gestures as well as by words; that it must be a misrepresentation of a fact and not a mere delusive promise and must have been believed by the person to whom it was made and must

have conduced to the injury, and that the popular idea of a false pretence is much broader than the legal definition. As to acts done under a "mistake of fact," see s. 11.

7. The following acts have been decided to amount to forgery—if done with fraudulent intent.

The writing by one man the name of another.

Writing the name of a fictitious person.

Writing a man's own name with intent that it should pass for another's.

Filling up a blank cheque with an unauthorized sum.

Obliterating, adding to, or altering the crossing of any cheque.

Altering a bill, note, or cheque, whether by addition, subtraction, or substitution.

Writing a bill or note over a genuine signature not given for that purpose, and though on unstamped paper, is a forgery of the signature.

Where several join in a forgery, each forges the whole instrument.

8. The following acts do not amount to forgery.

Writing words amounting to a bill or note over the signature of another purposely given, whether on stamped paper or not.

Drawing a bill upon a person with false addition or description to that person's name.

Uttering a bill, etc., by a man who represents that a signature on the bill is his when in truth it is another's.

Writing another's name with or without the words "per procuration," under a mistaken belief of having authority.

But informalities, or the absence of a stamp, do not prevent an offence amounting to a forgery.

9. With regard to the rights of parties giving, receiving, and paying upon forged bills, notes, and cheques, space will only allow of following general rules.

As will be seen by s. 24 of the Act, mentioned in chap. xv, s. 1, a *bonâ fide* holder for value cannot sue upon a bill or note, which he had taken *through* a forged or unauthorized signature, or give a discharge for it or even keep it against the man whose name is forged. (See chap. xv, s. 2.)

Therefore, if the acceptor or maker pay to a person who derives his title through a forgery, the payment is

no discharge; that is, the acceptor or maker may be obliged to give up the instrument to the true owner, and may be sued either upon it or upon the consideration.

This does not mean that every forged signature on a bill or note invalidates the title of a holder; for he may not take *through or under* the forged signature. (See chap. xv, s. 2.)

See also the exception, mentioned in chap. xv, s. 3, in favour of a banker cashing a cheque on which the payee's indorsement is forged.

Where a forged addition has been made to the sum for which a bill, note, or cheque was really made payable, a banker paying the whole cannot charge his customer for more than the original sum. (Chap. xv, s. 8; B. E. A., s. 64.)

Nor would the acceptor of a bill or maker of a note, if he had paid it, be able to take credit for it in his account with the drawer or payee.

But if the banker's customer gave occasion to the forgery by his own negligence, as by drawing a cheque for fifty pounds, and leaving room for the words "*three hundred*" to be placed before the fifty, then the banker on paying the cheque *bonâ fide* may take credit for the payment.

In the same way an acceptor of a bill is not to be the loser, if he accept and afterwards pay a bill so rendered capable of alteration by the negligence of a drawer.

It has already been seen (see chap. iv, s. 19) that even when a bill or note is *sold* (as when it is payable to bearer and is given without indorsement by the transferor on the purchase of goods at the time of such purchase) there is an implied warranty that all the signatures are genuine.

A banker is bound to know his customer's signature, and, if the banker pays a cheque on which his customer's name is forged as drawer, the customer cannot be debited with the amount.

For the same reason, if the customer, by arrangement with his banker, accepts bills payable at the bank, and the banker pays on a forged acceptance, he cannot debit his customer with the amount.

And, if the acceptance is genuine but the indorsement by which it purports to be transferred is forged or unauthorized, the banker cannot debit his customer

with the amount; for the banker's duty is only to pay to a person who can give a discharge, which cannot be done by one who forges an indorsement or writes one without authority or who takes through a forged or unauthorized indorsement. The exception in s. 60 of the Act in favour of a banker applies only to the case of a cheque, as we have seen in chap. xv, s. 3. So the banker paying an acceptance of his customer is bound to see that all the indorsements are genuine. He is not bound to see that the drawing is genuine; for that is admitted by the acceptance. (See chap. vii.)

If a banker pays a bill on which his customer's name has been forged as acceptor, the banker, if he wishes to recover the money from the holder who presented the bill, must give him notice of the forgery on the same day, to enable him to recover against the antecedent parties. For, though upon the dishonour of the bill the holder need not give notice of dishonour till the next day, yet he has the right to do so on the same day and must not be deprived of this right.

10. There is also an important principle of law that money paid under mistake of *fact* may be recovered back, though it is otherwise as to money paid under a mistake of *law*. This principle regulates the dealings with forged instruments. So that, if I am induced to discount a bill by a signature which I afterwards discover to be forged, whether I take through the signature or independently of it (see chap. xv, s. 2), that is whether I have a good title to the bill or not, I may at once recover the money from the person who brought the bill for discount. So, if such a bill is given me for the price of goods or other consideration, I may, on discovering the forgery, at once sue on the consideration. So if, having accepted a bill under a mistake of fact, I have to pay it to a holder in due course, I may recover the money from the drawer.

11. In an action on a bill or note which the defendant believes to be forged, he may at any time, by notice in writing, require it to be produced for his inspection. And the Court or a Judge may order the production on oath of all material documents and may have them kept in the Court, or otherwise dealt with as is thought fit.

CHAPTER XVII.

OF INTEREST.

1. *From and to what time.*
2. *Amount where the Instrument is silent.*
3. *Miscellaneous Matters.*

1. Where interest is expressed on the face of the bill or note to be payable, as where a note bears a promise to pay £100 six months after date with interest at £10 per cent., the holder is absolutely entitled to interest by the contract itself, and, inasmuch as a contract to pay interest from the day of payment would be meaningless, the time is counted from the drawing or making, and the rule includes instruments payable on demand. If the bill is undated, the interest is counted from the issue. (B. E. A., s. 9 [3].)

When the instrument is silent as to interest, as is usually the case, it does not carry interest even from maturity as a matter of course; but, by 3 and 4 Will. IV, c. 42, s. 28, the jury *may* allow interest on debts "payable by virtue of a written contract at a certain time;" which language includes bills and notes. The time in this case is counted (when interest is allowed) from the maturity of the instrument, which, where the bill or note is payable on demand, is the day of the demand.

When the first demand made is by commencing an action, the interest is reckoned from the service of the writ. As against an indorser, interest is only counted from delivery of notice of dishonour.

Interest is counted *to* the time of payment, but ceases after a tender.

2. The offence of usury is abolished, and therefore any amount of interest is recoverable if made payable by the instrument.

If the instrument is silent, 5 per cent. is the amount usually allowed, but if the principal might have been paid earlier but for the negligence of the plaintiff, the Court or a jury may diminish or altogether withhold interest.

3. If a party is liable by agreement to give a bill (as

for the price of goods sold), he cannot escape his liability to interest by not giving the bill.

A party who guarantees the due payment of a bill is liable to interest.

A plaintiff may not only sue for interest originally, but may continue his action for it after the principal has been paid.

CHAPTER XVIII.

OF THE STATUTE OF LIMITATIONS.

1. *Actions must be brought within* six years.
2. *Exceptions in favour of persons under disability.*
3. *The Statute must be* pleaded.—Notice *in the County Court.*
4. From *when, under various circumstances, the six years is counted.*
5. To *when it is counted.*
6. *How to prevent the operation of the Statute.*
7. *Defendant beyond Seas.*
8. Acknowledgments *and* Payments *may give another six years in which to sue.*
9. *Effect and Requisites of such* Acknowledgments.
10. *Effect and Requisites of such* Payments.
11. *Acknowledgments may be made to a Stranger.*
12. *Hints for Securing Proof of the Payments above mentioned.*
13. *Note Twenty Years old.*

1. By a statute passed in the 21st year of King James the First, and the modifications introduced by an act of the 19th and 20th year of the present reign, all actions on simple contracts (*i. e.* not founded on instruments under seal), which, of course, include those on bills, notes, cheques, &c., must be commenced within six years after the right to bring the action accrued.

2. To this there are exceptions in favour of plaintiffs who, at the time of the accrual of the cause of action (*i. e.* the right to sue), are under disabilities, as infants, married women, or persons of unsound mind, who have

six years, after the cessation of these disabilities, within which they may bring their action.

There is no longer an exception in favour of persons absent abroad.

Thus, an infant has six years after coming of age; a married woman, six years after the termination of the marriage by death or divorce; and a lunatic, six years after becoming of sound mind.

3. The Statute must be *pleaded* by the defendant, if he wishes to take advantage of it, and he will then allege in his written defence that the cause of action on which the plaintiff is suing did not accrue within six years, and if this is made to appear from the evidence adduced by either party, the plaintiff's remedy is barred.

In the County Court, where a defendant intends to rely on the Statute of Limitations for his defence, he must give notice thereof, in writing, to the Registrar of the Court, at least five *clear* days before the day when the defendant is ordered by the summons to attend in Court.

4. The time is counted, or, in legal language, the Statute *begins to run* on bills or notes from the first day that an action could be brought upon them.

On a bill or note, payable a certain time after date, the action can be first brought on the day of dishonour.

It will be seen in chap. xxii, s. 2 (B. E. A., s. 11 [2]), that a bill or note may be made payable at, or any time after, an event the happening of which is certain though the time of its happening is uncertain, as on or after the death of A. B., or on or after the paying off of a Queen's ship. The action on such a bill or note can be first brought on the happening of the event (or the time after) on which the instrument was payable.

If a note is payable by instalments, but upon any default then the whole to be due, the action can then be brought upon the first default.

But, if the administrator of a holder of a bill or note have not taken out letters of administration till after the bill or note became due, then the six years will only count against the administrator from the time of his taking out letters of administration.

If a bill or note is payable at, or at a certain time "*after sight*," no action can be commenced until presentment, or exhibition to the maker. "*After* demand" is the same as "after sight."

But, if the instrument be payable "on demand" (no demand being necessary to entitle a person to sue, *i. e.* the action being itself a sufficient demand), the six years will count from the date of the bill.

If an accommodation acceptor, having paid the bill, is suing the drawer, the plaintiff can sue within six years from the time of paying the money.

If acceptance of a bill be refused, and afterwards at maturity it be not paid, and the drawer or indorsers are sued, the six years count from the refusal to accept.

If the Statute have run out against the holder of a bill or note, his transferee is in no better position.

Where a loan is made by cheque, the Statute begins to run from the cashing, not from the drawing.

The money lodged by the customer with the banker is a loan to him and, therefore, if nothing is drawn out and no payment or acknowledgment is made by the banker for six years, he can plead the Statute, if he is dishonest enough to do so.

5. The six years, in order to operate as a bar, must have expired before the commencement of the action, *i. e.* in the High Court before the issuing of the writ, and in the County Courts before entering the plaint.

6. The operation of the Statute can be effectually prevented by commencing an action without bringing it to trial. If the action is in the High Court the plaintiff may obtain a writ which is good for a year, and even then he need not serve it, but, before the end of the year, may get it renewed by leave of a Judge or of the district registrar. On renewal it is resealed and stands good for six months, before the lapse of which it may be again renewed for a similar period. A plaint entered in the County Court stands good for a year and if the summons be not served the plaint may be renewed every year. Where the defendant is difficult to find or is unable to pay, this is a mode in which the plaintiff may keep up his rights against him as long as he does not go bankrupt.

7. Where the defendant is beyond seas (*i. e.* beyond Great Britain and Ireland, the Channel Islands, and Man), *when the right of action accrues*, he may be sued within six years from his return; which does not mean

his merely setting foot on the land and going away again. But if some of several co-defendants are within seas when the right accrues, they have the benefit of the Statute.

8. Certain acknowledgments and payments have the effect of taking the case out of the Statute (*i. e.* preventing its operation,) and give the plaintiff another six years within which to sue, counting from the date of such acknowledgment or payment, and they have this effect whether made *before* or at any time *after* six years from the accrual of the original debt.

9. These acknowledgments must be in writing, and signed by the party whom it is sought to make liable (*i. e.* the defendant), or by some person authorised by him.

A clerk, a wife, or an infant, may be an agent for this purpose.

In case of persons liable jointly, or jointly and severally, as drawers, acceptors, makers, &c., no acknowledgment or payment will bind any one but the person making it, unless, of course, it were made with the authority of the person liable jointly with him, as it would often be in the case of ordinary partnerships, when the acknowledgment was signed or the money paid in the name or on behalf of the firm.

No acknowledgment need be stamped, unless it amounts to a promissory note, an agreement, or a deed.

A simple acknowledgment of a sum due is presumed to mean a promise to pay, though it may be written, as often happens in correspondence, without any such intention; but, of course, the promise of payment must not be repelled by any expressions in the acknowledgment.

If the acknowledgment do not state expressly or point out by reference some particular sum, as by referring to a bill or note or the balance due upon it, etc., the sum due may be supplied by verbal evidence.

If the acknowledgment contain no date, the person receiving it should preserve the date in his memory by making a memorandum on the back, which is not, however, in itself evidence.

10. A payment, in order to take a case out of the Statute, should appear to be part payment of a larger

sum, of which a portion remains due, and to be made on account of the debt sued for.

A devise, or bequest for the payment of the debt due to a *specified* creditor, will take the debt out of the operation of the Statute. But a devise for payment of debts in general will not revive them if the Statute had run out at the testator's death, though it will prevent the Statute running out if it has not done so.

An executor is not bound, except by an express promise.

Where a debtor owes some debts which are barred, and some which are not, and makes a general unappropriated payment, such payment will not take the barred debts out of the Statute, unless the creditor, by notice, appropriates the payment (as to which, see chap. xi).

Giving a bill or note may amount to payment or acknowledgment. Goods treated as money are a sufficient payment. When on one or both sides of an account there are items which are barred by the Statute, and a settlement of the account takes place and a balance is struck, the process of forming a balance by both parties is regarded as a mutual payment, and takes the case out of the Statute, as regards the balance, which may, therefore, be sued for by the person in whose favour it stands.

11. The acknowledgment need not be made to the plaintiff, nor, indeed, to any party to the bill or note. Thus, a letter from one joint acceptor to his co-acceptor, or a deed between a party to the bill and a stranger, reciting that the bill is outstanding and unpaid, may amount to an acknowledgment against the persons writing the letter, or executing the deed respectively.

12. Payment may be proved like any other fact. An entry or memorandum, or a statement made by the party paying, will be good evidence against him by way of admission in proof of such payment.

But no entry of part payment made on a bill or note, by the party receiving the money, will be evidence of such payment, so as to prevent the Statute from running.

Mr. Justice Byles, in his work on bills, advises that the debtor should write the memorandum of part payment, whether of principal or interest, on the back of the bill or note, and that he and the creditor should

both sign it, and thus the rights of both will be protected.

Payment of interest takes the principal out of the Statute, and part payment of principal (in the case of bills and notes) has the same effect upon interest.

13. Independently of the Statute, there is a presumption that a note twenty years old (not being a bank note) is paid.

CHAPTER XIX.

OF SET-OFF AND COUNTER-CLAIM.

1. *Meaning of Set-off and Counter-claim.*
2. *Nature and Amount.*
3. *Cross-action may be brought instead.*
4. *Set-off or Counter-claim must be for a subsisting Claim.*
5. *Set-off to Action by surviving Partner.*
6. *Set-off in Bankruptcy.*

1. A defendant is permitted, but not obliged, by law to set off against the plaintiff's claim, or to set up by way of counter-claim, any demand against the plaintiff alone or to make a counter-claim against the plaintiff together with others. These other persons are made to appear to the counter-claim by being served with a copy of it as if it were a writ of summons. The object is to enable the Court to dispose of whole matters of dispute in one action without cross-actions or "circuity of action;" but, where the trial of the counter-claim at the same time with the plaintiff's claim would cause inconvenience, the Court may order a separate action to be brought. By ss. 88–90 of the Judicature Act, 1873, this right of counter-claim is extended to defendants in the County Courts.

But where the plaintiff is liable to the defendant on a dishonoured bill, as for instance if the plaintiff is the sole acceptor, the defendant is not bound to introduce the other parties to the bill into his counter-claim; for, though they are all liable for the same sum, the contract by each party is a separate contract.

2. The set-off or counter-claim may be for a greater or for a less amount than the plaintiff's claim. It may be a claim for damages or for an ascertained sum, or for both.

3. Instead of pleading a set-off, or setting up a counter-claim, the defendant may, if he likes, bring a cross-action, or he may do both, but if he is successful on the plea or counter-claim in the original action, the judgment in the cross-action, if in his favour, will be proportionally reduced.

One judgment may be set-off against another.

4. The claim set off or counter-claimed must be a subsisting claim, and not one the remedy for which is barred by the Statute of Limitations, or one which is satisfied by the discharge of the debtor out of custody. If the set-off or counter-claim is barred by the Statute of Limitations, that Statute must be specially replied.

The claim must have been due at the commencement of the action, and must remain due at the time of trial.

A bill or note, for example, to be set-off, must have been due and unpaid in the defendant's hands when the action was commenced, and must remain unpaid in his hands at the trial.

5. The debts and credits of a firm survive to the surviving partner, whose duty it is to collect the credits and to pay the debts. And thus, though he may be accountable to the representatives of the deceased partners for their shares, a separate debt due from him may be set off against a debt due to the firm, and, when he is sued for his own separate debt, he may set-off a debt due to the firm.

6. The law of bankruptcy allows a larger set-off. It allows a set-off of all mutual debts and credits which arose without the other party having notice of the specific act of bankruptcy on which the adjudication is founded. So that an undue acceptance of a bankrupt, though indorsed away, may be the subject of set-off. So if an indorser be bankrupt, the holder may have the benefit of set-off. In each case credit has been given to the bankrupt, and a liability incurred on his making default.

CHAPTER XX.

OF CHEQUES.

1. *Definition of Cheque. Who may draw and for what amount.*
2. *Forms of Cheques.*
3. *Payee fictitious.*
4. *Banker's duty to Customer to pay Cheque.*
5. *Banker's duty to pay, how ended.*
6. *Time for presenting.*
7. *Banker paying forged Cheque.*
8. *Banker exempt from Liability for forged Indorsement.*
9. *Partnership and Joint Accounts.*
10. *Countermand of Cheque.*
11. *Cheque as Payment.*
12. *Possession of Cheque does not make a man a Creditor.*
13. *Bill of Exchange paid by Cheque.*
14. *Crossing.* B. E. A., ss. 76, 77.
15. *Explanation of Crossings. Who may cross.*
16. *Effect of Crossings.* B. E. A., ss. 79–82.
17. *Explanation of effect of Crossings without "Not Negotiable."*
18. *Effect of "Not Negotiable."*
19. *Crossing not to be altered or obliterated.*

1. A cheque is a bill of exchange drawn on a banker payable on demand. Except as otherwise provided in Part III of the Bills of Exchange Act, the provisions of the Act applicable to a bill of exchange payable on demand apply to a cheque. B. E. A., s. 73.

A cheque, therefore, is an unconditional order in writing addressed to a banker, signed by the person giving it, requiring the banker to pay on demand a sum certain in money to, or to the order of, a specified person, or to bearer. B. E. A., s. 3.

A cheque may be drawn for any amount, however large or small. A cheque may be drawn by two or more, or by a partner in the firm name.

2. The following is the ordinary form of a

CHEQUE BY ONE IN FAVOUR OF ONE.

London, 24th May, 189—

To Messieurs A. B. & Co., Bankers, Fleet Street.

Pay Alexander Pope or bearer [*or* order] the sum of Three hundred pounds, five shillings.

£300 5*s.* 0*d.* JOHN DRYDEN.

Some forms are printed to "bearer" and some to "order." Either word may be changed to the other by the person who signs the cheque at its foot, but only by him or with his authority.

This person is called the drawer, the banker is the drawee, and the person (if any) named as the person to whom, or to whose order, the money is to be paid is called the payee. The payee, while he holds the cheque, and any person who holds it by transfer from him is called the holder.

The words "or order" in the form above given may be omitted, and the cheque will still be payable to Pope or his order, which order must be expressed by his indorsement. The rules as to indorsement and transfer of cheques are the same as those with regard to other bills of exchange payable on demand. (See Chap. iv.)

Like other bills of exchange, a cheque need not be dated (B. E. A., s. 3 [4]), and when undated it is payable on demand, because "no time for payment is expressed" (B. E. A., s. 10), and it is not invalid for being antedated or post-dated or dated on a Sunday.

The cheque may be made payable "to bearer" or "to A. P. or bearer," and in both cases passes by delivery without indorsement.

It may be made payable "to A. P.," "to A. P. or order," or to the order of "A. P.," and in all these cases A. P. can receive the money without indorsement (though the banker may ask for it as evidence of identity or in token of discharge), or A. P. may transfer the cheque by his indorsement.

It may be made payable to "A. P. only" or "to A. P. not transferable," and then no one but A. P. can claim the money, and he should be prepared to indorse it on presentation to show his identity.

It may be made payable to two or more jointly, or to one of two, or to one or some of several, or to the holder

of an office for the time being (B. E. A., s. 7 [2]); and the indorsements required in these several cases for transferring the cheque have already been stated in chapter iv, ss. 4—10, concerning other bills.

3. When the payee is a fictitious or non-existing person, though the words "or bearer" do not follow, the cheque may be treated as payable to bearer (B. E. A., s. 7), for there is no one who can indorse. This rule includes not only cases where the payee is obviously fictitious as "rent," "goods," or "cattle," but where a name is written which does not mean any person in particular.

4. A banker is under an obligation to his customer to honour the cheques which his customer draws on him as long as he has funds of his customer wherewith to meet them; but the banker is not responsible for dishonouring a cheque if his customer's money was paid in such a short time before presentation as not to allow of the banker being made aware of the receipt. Nor is the banker responsible if the customer varies his signature without giving the banker notice.

If the banker dishonours a cheque which he ought to have paid, he is answerable in damages to his customer, not only for the inconvenience and loss arising from the transaction in question, but for the general injury which will be assumed to result to the customer's credit. But the banker is in no way liable to the holder of the cheque, whose remedy is against the person from whom he took it, or an indorser (if any), or the drawer.

5. "The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

(1) "Countermand of payment;

(2) "Notice of the customer's death."—B. E. A., s. 75.

To these may be added the bankruptcy of the customer. It will be observed that it is the notice of the death, and not the death itself, that determines the authority, so that a banker may take credit for a cheque paid for a customer of whose death he had no knowledge. In the case of an ordinary bill of exchange or promissory note payable at his bank, it is doubtful if he would be able to do so.

As to countermand, where the cheque is drawn by two

or more, any one of them can countermand it; and when it is drawn by a partner in the firm name any partner can countermand it.

6. As regards the time for presenting cheques. If the drawer and the banker both remain solvent, the holder of a cheque may present the cheque so as to charge the drawer at any time within six years of its date; after which the remedy for the money will be barred by the Statute of Limitations. If the drawer is solvent and the banker is solvent, the drawer can sustain no damage; for it is his duty to leave enough to his credit to meet every cheque.

The drawer is liable for six years "on the cheque," but not for the original consideration; for a cheque taken for a debt is payment unless promptly presented and dishonoured.

The banker would probably not cash a cheque nearly six years old, and might even return one only six months old as "stale" or "out of date." But this has nothing to do with the liability of the drawer.

But if the cheque is not presented within a reasonable time, *and the drawer is prejudiced by the delay*, he will then be discharged to the extent of the sum which he loses by the delay. If the banker goes bankrupt, and pays only ten shillings in the pound, the drawer is discharged of half the amount of the cheque. In fact, by holding the cheque too long, the holder runs the risk of the banker failing. The holder then becomes a creditor of the banker, and entitled to prove against his estate for the amount for which the drawer is discharged. (See B. E. A., s. 74.)

It is in this sense only that the drawer is entitled to have his cheque presented within a reasonable time. The "reasonable time" usually includes the banking hours of the day after that on which the cheque was issued, and is not extended by the holder giving the cheque to his banker for presentation, or by its circulation through several hands. If the cheque was received after the banking hours of a day, the holder has the whole of the morrow and up to the close of banking hours of the day after.

7. A banker is bound to know his customer's handwriting as drawer, and, if a banker pays a cheque on which the drawer's name is forged, the loss falls on

the banker; for he can only charge the customer with money paid upon *his* cheque.

If the body of the cheque be *in part* forged, the rule is the same; unless the customer, by his carelessness in drawing the cheque, has given opportunity for the forgery. (See chap. xvi, sec. 9.)

8. To this there is an exception in the case of forged or unauthorized indorsements. When a cheque payable to order is drawn on a banker and he pays the cheque in good faith and in the ordinary course of business, it is not incumbent on him to show that the indorsement of the payee is genuine or was authorized by him, or that any subsequent indorsement was genuine or authorized; and the banker is deemed to have paid the bill in due course, although the indorsements be made without authority or forged. (See *antè*, chap. x, sec. 5; B. E. A., sec. 60.)

This exemption from liability does not extend beyond the drawee. If I draw on my banker in favour of W. or order and the cheque is lost in the post before it reaches him, and the thief forges W.'s name and pays the cheque into his (the thief's) account with a banker, who presents the cheque and gets it cashed and lets the thief draw the money, I may maintain an action against the thief and against his banker for the money.

9. When a banking account is opened in the name of a firm, each partner who is authorized to draw on the account writes his firm-signature in the banker's book, and the banker is bound, when in funds, to honour a cheque signed by any of the partners in the firm name. If any partner is not to be authorized to draw, the banker will have instructions to that effect, and that partner's signature will not be written in the book. After the account is opened the partners may join in varying these instructions.

When two or more, whether partners or not, open a joint account, not in a firm name but in their own names as individuals, all must sign, unless the banker has instructions that a certain one, or a certain two, etc., may draw, or unless one has authority to sign for the others, in which case the authority should be shown to the banker, who should have a copy or a duplicate of it.

When a member of a firm dies, or when one of several joint customers dies, the survivor or survivors are the

only persons who can draw cheques. The banker is the debtor of the survivors only, and the executor or administrator of the deceased is a stranger to the contract with the banker, and cannot control the account. The survivors may be accountable to the deceased's estate; but the banker has nothing to do with that.

10. A drawer may countermand the payment of a cheque.

The signature of a firm, affixed by a partner or other person who has authority to do so, being equivalent to the signature of each partner, any partner may countermand payment.

When more than one, whether partners or not, have a joint account, any one may countermand payment. The countermand is as if the signer withdrew his signature.

The banker has no authority to pay a countermanded or "stopped" cheque. Being under no contractual obligation to the holder of a cheque, the banker is not responsible to him for dishonouring it whether it is stopped or not. The holder's remedy is either on the cheque against the parties to it, or against the person, whether a party or not, to whom he gave consideration for it.

11. A cheque, unless dishonoured, is payment; *i. e.* a man having taken a cheque for his debt, cannot sue for the debt till he has presented the cheque and payment has been refused.

To prove that a debt has been paid by means of a cheque, the banker must be called to prove that he paid it, and it must be shown to have passed through the hands of the creditor. For this reason, when a debt is paid by cheque it should be made payable to the payee or order, and he should be requested to write his name on the back.

A person who has tendered a cheque in payment of a debt is in the same position as if he had tendered money, unless the tender was objected to *on the ground* of its being a cheque.

12. The mere possession by A. of an unpresented cheque drawn by B. is no evidence of a debt due from B. to A. But if the cheque has been presented and payment refused, it would be otherwise.

13. When an offer is made to pay a bill by a cheque,

if the holder gives up the bill before cashing the cheque, he *may* be considered to rely entirely on the cheque, and then he would lose his remedy on the bill, if the cheque were dishonoured.

14. A cheque being liable to be stolen, either from the person or from the post, and its being payable to order being only a slender safeguard, owing to the rule above given as to forged indorsements, it is very desirable to prevent the cheque being presented by a person for whom it is not intended, and paid to him.

The mode adopted as a further safeguard against this is called "crossing," for which the Act provides as follows:—

Crossed Cheques.

76. (1.) Where a cheque bears across its face an addition of—

(*a*) The words "and company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable;" or

(*b*) Two parallel transverse lines simply, either with or without the words "not negotiable;" that addition constitutes a crossing, and the cheque is crossed generally.

2. When a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

77. (1) A cheque may be crossed generally or specially by the drawer.

(2) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3) Where a cheque is crossed generally the holder may cross it specially.

(4) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

(5) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

78. A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing.

15. The general crossing is made by drawing two parallel lines about the middle of the face of the cheque from top to bottom at right angles with the writing of the body of the cheque.

Between these lines may be added the words "and company" or "& Co.," or the like, without altering the effect, and "not negotiable" may also be there written, whether "and company" or any abbreviation of it is there or not.

The special crossing may be with or without the transverse lines, and consists of the name of a banker or banking company written across in the same direction as the lines, and with or without "not negotiable."

"Not negotiable" can only be added to a crossing, so that the lines are wanted for it if no banker's name is written across, but if such a name is so written (a special crossing) no lines are wanted.

The drawer may cross the cheque in any of these ways, and so may the holder, if he gets it uncrossed. And, where it is crossed, generally, the holder may cross it specially by adding the name of a banker, and in any case he may add the words "not negotiable."

16. Let me now finish the quotation of what the Act says about crossed cheques, and then add something by way of explanation.

79. (1.) Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

(2.) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

80. Where the banker on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of

the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

81. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

82. Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

17. Let us first consider what may happen to a cheque crossed without "not negotiable."

When the cheque is crossed generally, the banker on whom it is drawn must only pay it to some other banker, and when it is crossed specially (*i.e.* with the name of a banker), the banker on whom it is drawn must only pay it to the banker with whose name it is crossed or his agent for collection.

[The banker whose name is written across a cheque may cross it to his agent for collection; otherwise a cheque with two crossings must be refused payment. —B. E. A., s. 79 (1).]

If the drawee obeys the crossing (that is, if he pays to *some* banker the cheque crossed generally, or pays to the particular banker the cheque crossed specially) he may debit his customer with the amount. And further, if the cheque has reached the hands of the payee, though he may have lost it, it is to be treated, so far as the drawer and his banker are concerned, as if it had been paid to the true owner (sec. 80). The true owner may be the payee himself, or his indorsee, or other transferee.

If the drawee disobeys the crossing (that is, if he pays a crossed cheque across the counter or a specially crossed cheque to the wrong banker) he is liable to the true owner of the cheque for any damage he may sustain through such payment (sec. 79). The "true owner" is the person legally entitled to receive the money on the cheque. This person will be the drawer if the cheque has not reached the hands of the payee, and, if it has reached the payee's hands, may be the payee himself or his transferee who may have lost it or been robbed of it. And, if one of them has lost it or has been robbed of it,

the true owner may not be the person who has suffered the loss or robbery, but may be one who has taken the cheque innocently and for value from the finder or the thief, but of course not through a forged or unauthorised indorsement, which conveys no title.

The customer may not only refuse to be debited but may sue the banker for the loss sustained by his wrongful act; or the customer may allow the banker to debit him and may recover the amount from the person who presented the cheque, *if he had no title.*

18. Now we come to "not negotiable." These words can only be inserted as part of a general or special crossing. The use of these words can only be understood by reference to the rule that a cheque which is originally made, or has by *genuine* indorsement become, payable to bearer, passes from hand to hand like money. This means that, though the finder or the thief cannot recover on it, anyone who takes it innocently and for value from the finder or the thief has a good title to it, and if it is dishonoured may maintain an action against the drawer and indorsers for the amount. "Not negotiable" removes the cheque out of this rule, and the person who takes the cheque "shall not have, and shall not be capable of giving, a better title to it than that which the person from whom he took it had." (Sec. 81.) "Not negotiable," in short, puts the cheque in the position of an overdue bill, as to which almost identical words are used in s. 36 of the Act. (See chap. iv, s. 13.) Like the overdue bill, the "not negotiable" cheque comes to the hands of the transferee with notice that he must inquire into the title of his transferor and rely on his indorsement. If the person who transfers the cheque had a good title, the taker is safe; otherwise, though he presents the cheque and gets the money, he may have to refund it. The banker on whom the cheque is drawn may pay it to any banker who presents it if crossed generally, or to the banker named if it be crossed specially, and the banker who receives the money may pay it to his customer, and neither banker, if he has acted in good faith and without negligence, will be liable to refund the money.

But the true owner may recover against the person on whose behalf the cheque was cashed and against the finder or the thief and any other intermediate person.

For example, a cheque crossed "not negotiable" was drawn in favour of a firm, and one of the partners, in fraud of his co-partner, indorsed the cheque to a man who presented it and got it cashed. It was held that the other partner who, under the terms of the partnership agreement, was entitled to the cheque, could recover the amount from the man who had got it cashed.

The words "not negotiable," therefore, bear their own proper meaning, for "negotiable" in the case of a mercantile instrument signifies that it can be passed from hand to hand carrying its value with it.

The cheque may be crossed in any way, and with or without "not negotiable," by the drawer, and by any holder who takes it uncrossed. And, if any holder receives it crossed generally, he may cross it specially, and, whichever way it is crossed, he may add "not negotiable." But "not negotiable" can only be added *to a crossing;* that is, there must either be the transverse lines or a banker's name written across. When the crossing is once made it becomes a material part of the cheque and must not be altered (except by a lawful *addition*) or obliterated.

CHAPTER XXI.

OF A PROMISSORY NOTE.

1. S. 89 of the Bills of Exchange Act, quoted below, says that the law as to bills of exchange applies generally to promissory notes, and in the course of this book the same thing has been stated from time to time. A great deal of what follows will be found stated and explained in the chapter on the forms of bills and notes and in other parts of the book. But I shall be guilty of little repetition by quoting the seven sections of the very readable chapter on promissory notes which constitutes part iv of the Act.

2. The following defines a promissory note and an "inland" promissory note:

Sec. 83. (1) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4) A note which is, or on the face of it purports to be, both made and payable within the British Islands is an inland note. Any other note is a foreign note.

3. A note, to be a note, must be delivered, without which it is not "issued." (See B. E. A., s. 2; and chap. xv, s. 7.)

Sec. 84. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

4. Promissory notes may be joint or joint and several. (See chap. xxii, ss. 21, 25.)

Sec. 85. (1) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally according to its tenor.

(2) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note.

5. The time for presenting a note payable on demand (see chap. ix, ss. 1, 14) is here given:

Sec. 86. (1) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

6. The place at which a bill or note must be presented so as to charge the indorsers and, in one case, even to charge the maker (see chap. ix), is here stated:

Sec. 87. (1) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case presentment for payment is not necessary in order to render the maker liable.

(2) Presentment for payment is necessary in order to render the indorser of a note liable.

(3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

7. The contract of the maker and what he warrants is defined as follows:

Sec. 88. The maker of a promissory note by making it—

(1) Engages that he will pay it according to its tenor:

(2) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

8. That the law as to bills of exchange applies *mutatis mutandis* to promissory notes, with certain obvious exceptions, appears in s. 89.

Sec. 89. (1) Subject to the provisions in this part and, except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3) The following provisions as to bills do not apply to notes namely, provisions relating to—

(*a*) Presentment for acceptance.

(*b*) Acceptance.

(*c*) Acceptance *suprà* protest.

(*d*) Bills in a set.

(4) Where a foreign note is dishonoured, protest thereof is unnecessary.

9. I will here only mention two items about notes for the non-legal reader. One is that a note, like a bill or cheque, made in favour of a person named, though without the words "or order," is transferable by his indorsement and, when indorsed by him, is payable to bearer—see ch. iv, s. 3, and B. E. A. 8 (4)—and the other that an infant and a corporation such as is without power to bind itself by promissory notes may yet be made payees of a note, either in the body or by indorsement, and may sue and recover. They may also, when payees, make a valid indorsement, so as to pass the right to the note, though unable to bind themselves as indorsers so as to become liable in case of dishonour. (See chap. ii, sec. 2.)

In respect of the forms of notes and the effects of using the respective forms, the reader is referred to chaps. i, s. 2, and xxii, s. 20, *et seq.* The law as to overdue notes will be found in chap. iv, ss. 13, 14; transfer by delivery is dealt with in chap. iv, ss. 19—21; presentment for payment in chap. ix; suretyship in connection with notes in chap. xiii, particularly in ss. 2, 3, 10 and 11, and notice of dishonour in chap. xiv. For the rest the Index will be a guide.

CHAPTER XXII.

OF THE FORMS OF BILLS AND NOTES.

1. *Bills and Notes must conform to Statutory Definitions.*
2. *Quotation from* B. E. A., ss. 3—21, *on "Form and Interpretation."*
3. *Bill payable to Drawer's Order.*
4. *Bill payable to Third Person.*
5. *Indorsements of these Bills.*
6. *Bills on Demand or at Sight. After Sight, etc.*
7. *Bills payable to Bearer.*
8. *Man drawing on himself. Drawee fictitious.*
9. *Drawee without capacity to Contract.*
10. *Bill addressed to two or more. Bill payable to two or more. Bill payable to holder of office.*
11. B. E. A., ss. 8, 10, 13 *and* 16.

12. *Acceptance. General Acceptance.*
13. *Qualified Acceptance.*
14. *Acceptance per Procuration.*
15. *Indorsements. In Blank. Special. Restrictive.*
16. *Signature by Agent. By person in representative character.*
17. *Drafts, Acceptances and Indorsements by Corporations.*
18. *Bills in a Set.*
19. *Definition of Promissory Note.*
20. *Promissory Note by One in various forms.*
21. *The like by Two or more in various forms.*
22. *Days of Grace.*
23. *Indorsemeuts of Promissory Note.*
24. *Promissory Note by Corporation.*
25. *"Joint" and "Joint and Several" explained.*
26. *Acceptances always Joint.*
27. *No precise form of words necessary for Bills or Notes.*
28. *Note payable to Self or Order.*
29. *Date of Place and Time.*
30. *Condition to Acceptance must be written on Bill.*
31. *Amount in Words and Figures.*
32. *Note pagable after Sight.*
33. *Description of Payee.*
34. *Miscellaneous matters.*

1. No precise form of words is necessary to constitute a bill or a promissory note; but they must conform to the definitions given of them respectively by the Act. (See chap. i, and B. E. A., ss. 3—21, as to Bills, and ss. 83—89 as to Notes.)

2. In relation to the form and interpretation of bills and notes, let me first quote the following sections of the Bills of Exchange Act, 1882, as being a statutory exposition of that portion of the subject and incapable of being excelled in neatness and brevity; after which I will give some illustrations to make it plainer. The figures at the beginnings of the paragraphs of this quotation are those of the sections and sub-sections of the Act.

Form and Interpretation.

3. (1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it,

requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.

(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (*a*) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount, or (*b*) a statement of the transaction which gives rise to the bill, is unconditional.

(4) A bill is not invalid by reason—

(*a*) That it is not dated;

(*b*) That it does not specify the value given, or that any value has been given therefor;

(*c*) That it does not specify the place where it is drawn or the place where it is payable.

4. (1) An inland bill is a bill which is or on the face of it purports to be (*a*) both drawn and payable within the British Islands, or (*b*) drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill.

For the purposes of this Act "British Islands" mean any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them being part of the dominions of Her Majesty.

(2) Unless the contrary appear on the face of the bill the holder may treat it as an inland bill.

5. (1) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

(2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

6. (1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

7. (1) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

(3) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

8. (1) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

(2) A negotiable bill may be payable either to order or to bearer.

(3) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

9. (1) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

(*a*) With interest.

(*b*) By stated instalments.

(*c*) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.

(*d*) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

(2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

10. (1) A bill is payable on demand—

(*a*) Which is expressed to be payable on demand, or at sight, or on presentation; or

(*b*) In which no time for payment is expressed.

(2) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

11. A bill is payable at a determinable future time within the meaning of this Act, which is expressed to be payable—

(1) At a fixed period after date or sight.

(2) On or at a fixed period after the occurrence of a specified event *which is certain to happen*, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly:

Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but

shall operate and be payable as if the date so inserted had been the true date.

13. (1) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(2) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

For sec. 14 on "days of grace," see ch. ix, s. 12.

For sec. 15 as to "referee in case of need," see ch. vi, s. 8, and ch. xii, s. 2.

16. The drawer of a bill and any indorser may insert therein an express stipulation—

(1) Negativing or limiting his own liability to the holder:

(2) Waiving as regards himself some or all of the holder's duties.

17. (1.) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2) An acceptance is invalid unless it complies with the following conditions, namely:

(*a*) It must be written on the bill and signed by the drawee. The mere signature of the drawee without additional words is sufficient.

(*b*) It must not express that the drawee will perform his promise by any other means than the payment of money.

18. A bill may be accepted—

(1) Before it has been signed by the drawer or while otherwise incomplete.

(2) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment.

(3) When a bill payable after sight is dishonoured by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment to the drawee for acceptance.

19. (1) An acceptance is either (*a*) general or (*b*) qualified.

(2) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. In particular an acceptance is qualified which is—

(*a*) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated.

(*b*) Partial, that is to say, an acceptance to pay part only of amount for which the bill is drawn.

(*c*) Local, that is to say, an acceptance to pay only at a particular specified place.

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

(*d*) Qualified as to time.

(*e*) The acceptance of some one or more of the drawers, but not of all.

20. (1.) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *primâ facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *primâ facie* authority to fill up the omission in any way he thinks fit.

(2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact:

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

21. (1) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable until delivery of the instrument in order to give effect thereto.

Provided that where an acceptance is written on a bill, and the drawee gives notice to, or according to the directions of, the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(*a*) In order to be effectual must be made either by, or under the authority of, the party drawing, accepting or indorsing, as the case may be:

(*b*) May be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

But if the bill be in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him so as to make them liable to him shall be conclusively presumed.

(3) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

3. Let us now go back to the order made by the drawer upon the drawee, which is called the draft or drawing of a bill and forms the body of the instrument. By s. 3 of the Act it must be unconditional, for a sum certain, payable on demand or at a fixed or determinable future time, to a specified person or his order, or to bearer, and must bear the drawer's signature. Let us suppose the "specified person" is the drawer himself, then the bill will be like the following:

BILL PAYABLE TO DRAWER OR HIS ORDER.

£100 0*s.* 0*d.* *Manchester, 1st October,* 18—.

Six months after date pay to me or my order One Hundred pounds, value received. JOHN SHEPPARD.

To Mr. Jonathan Wild,
Old Bailey, London.

The words "or order" may be omitted (the Act, s. 8 [4]) and the bill will still be transferable by John Sheppard's indorsement. The words "value received" are not necessary. They mean, in this case, value received by Wild from, or on account of, Sheppard.

4. If Sheppard, instead of making himself the payee, desires the money to be paid to Samuel Johnson, the draft will be thus:

BILL PAYABLE TO A THIRD PARTY OR ORDER.

£100 0*s.* 0*d.* *Manchester, 1st October,* 18—.

Six months after date pay to Samuel Johnson or order One Hundred pounds, value received. JOHN SHEPPARD.

To Mr. Jonathan Wild,
Old Bailey, London.

Here the words "or order" may be omitted and the bill will none the less pass by Samuel Johnson's indorsement. If the bill had been payable "to the order of Samuel Johnson," it would have been payable to him or his order at his option (B. E. A., s. 18 [4, 5]). The words "value received" are unnecessary; but, as they stand, they mean value received by Sheppard off Johnson.

5. The former of these bills is, without indorsement, payable only to Sheppard, the drawer, and the latter is, without indorsement, payable only to Johnson; but each, on presenting his bill for payment, may be asked to indorse it as evidence of identity and in token of discharge.

When either of these drafts, whether accepted or not, is indorsed by the payee (Sheppard in the former and Johnson in the latter) writing his name on the back, it becomes payable to bearer and is transferable without further indorsement. (B. E. A., s. 8 [3]).

6. Instead of "six months" from date, the money may be ordered to be paid "on demand" or "at sight," or "six months after demand" or "six months after sight." Thus:

BILL PAYABLE AFTER SIGHT.

£50 0*s.* 0*d.* [*Date of place and time.*]
Six months after sight pay [*follow either of the above forms.*]

BILL PAYABLE ON DEMAND.

£50 0*s.* 0*d.* [*Date of place and time.*]
On demand pay [*follow either of the above forms.*]

7. Where the payee is not named the bill is payable to bearer, and runs thus:

BILL PAYABLE TO BEARER AT FIXED OR DETERMINABLE TIME.

£50 0*s.* 0*d.* [*Date of place and time.*]
Three months after date [*or* after demand *or* after sight] pay the bearer Fifty pounds.
[*Address.*] [*Signature.*]

Or thus:

BILL PAYABLE TO BEARER ON DEMAND.

£50 0*s.* 0*d.* [*Date of place and time.*]
Pay to bearer on demand Fifty pounds.
[*Address.*] [*Signature.*]

The time is not in all cases "fixed," but it is in all "determinable;" for, when demand is made or sight given, the due date can be ascertained.

The bills in favour of bearer, whether on demand or not, pass by delivery from hand to hand without indorsement; but they may of course be indorsed any number of times.

8. As regards s. 5 of the Act, the instances in which the drawer and the drawee are the same person occur where a firm carry on business in two places and one house draws on the other; or where a man carries on business under a trade name, as if John King trades as "John King and Co." and John King draws on John King and Co. or *vice versâ*. If a man draws on a person who is in fact fictitious, or who is obviously fictitious as "Phœbus," the holder may, as in the other cases mentioned, treat the bill as a note of the drawer and need not present or give notice of dishonour.

9. The cases of a bill being drawn on a person without capacity to contract are mostly where the drawee is an infant, or a corporation or company (person includes

"corporation") which, not being formed for trading or not having authority under a charter or Act of Parliament to bind itself by negotiable instruments, cannot be bound by acceptance. (See chap. ii, ss. 2—4.)

10. A bill may be addressed to two or more whether partners or not, as "to E. F. and G. H.;" but "to E. F. *or* G. H." is not permitted. (B. E. A., s. 6.)

A bill may be drawn payable to two or more, as "pay to A. B. and C. D.," or to one of two or more, as "pay to A. B. *or* C. D." In the former case the bill only passes by the indorsement of both; in the latter it passes by the indorsement of either. (B. E. A., s. 7.) Of course in the former case one may have authority to sign the name of the other, which is likely if they are partners. Where the bill directs payment to "the holder of an office for the time being," as "the treasurer of the Smith Club for the time being," it means the man who is treasurer when the bill falls due; and, if he indorses, he should put his name first and then his office, adding "*sans recours*" if the money is not for himself.

11. A bill will be "not transferable" under s. 8 of the Act if it directs payment to the payee "only" or his name is followed by the words "not transferable."

Sec. 10 of the Act explains itself; sec. 11 has been anticipated in this chapter with explanation, and sec. 12 has been dealt with in chapter 15, s. 9.

As to s. 13 (1) it is not usual to date acceptances or indorsements where the bill is payable a certain time after date, for the date of the signature would not affect the period of payment; but where the bill is payable at a fixed time after *demand*, *sight* or *presentation*, the date of the acceptance is important as fixing the date of payment. When such a bill is presented for acceptance and not accepted and is accepted afterwards on a subsequent presentation, the holder is entitled to have the acceptance dated as of the first presentation. (See s. 18 [3].)

The ante-dating or post-dating mentioned in the section can deceive no one where the bill is payable at a time from date; it is chiefly in the case of cheques that this provision is important.

The most usual "express stipulations" under section 16 are where a drawer or indorser adds to his signature "but as agent only for A. B." or "notice of dishonour

waived" (see chap. xiv, ss. 15, 16) or where an indorser adds the words "*sans recours*" or the like (see chap. iv, s. 9).

12. A bill may be indorsed before acceptance or after; but, before saying anything more about indorsements, let us come to the acceptance.

The acceptance must be written on the bill and signed, but the mere signature is enough. It must not undertake to pay in anything but money, as for instance in bills or country bank notes or uncoined metal. (Sec. 17.)

As to sec. 18 of the Act. The acceptance may be before the drawer has signed the bill or when it is otherwise incomplete (see chap. vi, s. 5, and chap. vii, s. 2, and chap. xv, s. 5), and when the bill is overdue, whether dishonoured or not, and after dishonour by non-acceptance or by non-payment.

The acceptance is usually written across the middle of the face of the bill. The person to accept is of course the drawee to whom the bill is addressed. The following is a bill payable to drawer's order, bearing the "general" acceptance mentioned in s. 19 of the Act.

GENERAL ACCEPTANCE OF BILL PAYABLE TO DRAWER'S ORDER.

£100 0*s.* 0*d.* *Liverpool, 1st June,* 189–.

Two months after date pay to my order One Hundred pounds, value received.

Accepted. John Thorpe.

To Mr. John Thorpe, Mercer, London. WILLIAM BROWN.

The acceptance would still be general if given in any of the two following ways:

GENERAL ACCEPTANCE WITH AN ADDRESS GIVEN.

Accepted.
JOHN THORPE, 99, Aldermanbury.

THE LIKE PAYABLE AT A PLACE NAMED.

Accepted payable at the L. and W. Bank.
JOHN THORPE.

The effect of any one of the above three forms of acceptance is that the holder may sue the acceptor without presenting the bill to him at all; but, if the holder wishes to preserve his remedies against the drawer and indorsers, he must, where an address is given or a place of payment is named, present the bill there. Where no such indication is given, as in the first of the three forms, he must, for this purpose, present the bill at the acceptor's place of business if known, if not at his ordinary residence if known, and, if neither are known, at his last known place of business or residence, or to him personally anywhere. (B. E. A., s. 45, and see chap. ix, s. 7.)

13. The most usual kind of qualified acceptance is a

QUALIFIED ACCEPTANCE PAYABLE AT A SPECIFIED PLACE ONLY.

Accepted payable at the L. and W. Bank only and not elsewhere.
JOHN THORPE.

In this case, if the holder is satisfied to take such an acceptance, the bill must be presented at the place named, not only to charge the drawer and indorsers, but to charge the acceptor himself.

An acceptance may be qualified by being a

PARTIAL ACCEPTANCE (of a draft for £100).

Accepted for £50 only.
JOHN THORPE.

Or it may be qualified as to time, as—

QUALIFIED ACCEPTANCE OF A DRAFT AT THREE MONTHS.

Accepted payable at six months.
JOHN THORPE.

Or it may be an

ACCEPTANCE QUALIFIED BY A CONDITION.

Accepted, payable when in funds.
JOHN THORPE.

The acceptance which is qualified by being the acceptance of less than the whole number of drawees, where there are more than one, needs no explanation.

But a drawer, if entitled to have his draft accepted, is not bound to take any qualified acceptance unless he has agreed to do so. And the holder of an unaccepted draft who, on presenting it for acceptance, cannot get

any but a qualified acceptance, may refuse it and treat the bill as dishonoured, and may give notice of dishonour and sue the drawer and indorsers.

14. In consequence of the absence or illness of the drawee, a holder may be offered an acceptance *per procuration*, or *per pro.*, thus:

ACCEPTANCE PER PROCURATION.

Accepted,
per proc. JOHN THORPE, Henry Smith.

but such an acceptance operates as notice that the agent, Smith, has but a limited authority to sign (B. E. A., s. 26), and the holder should see some evidence of the extent of the authority. Such a signature interposes an obstacle in the way of proving the liability of the drawee.

15. Let us return to indorsements, and take Brown's draft on Thorpe. Before or after getting Thorpe's acceptance Brown may have written on the back an

INDORSEMENT IN BLANK.

WILLIAM BROWN.

This indorsement, when he delivers the bill, but not before (B. E. A., ss. 21, 31; chap. iv, s. 7), makes it payable to bearer, and it may pass from hand to hand without further indorsement, and the person who holds when it is due is entitled to the money. Brown delivers it to Thomas Lloyd, who wishes in turn to make it payable to Edwin Jones or his order; so Lloyd writes

SPECIAL INDORSEMENT.

Pay Edwin Jones [or order*].

THOMAS LLOYD.

* These words may be omitted. (B. E. A., 8 [4].)

The effect of this is that, without Jones's indorsement, the bill will not pass; so Jones, wishing to negotiate the bill to Henry Morgan, writes simply "Edwin Jones," which is another indorsement in blank. Morgan, however, wishes to transfer to William Watkin, but so that the bill shall no longer be payable to bearer and shall require Watkin's signature, and yet does not want to be liable on it himself. So, finding Jones's

name on the bill, Morgan writes over it "pay William Watkin," and hands it to Watkin; which is a

CONVERSION OF BLANK INTO SPECIAL INDORSEMENT.

Pay William Watkin.

EDWIN JONES.

Now Watkin has really taken this bill as agent for another man, and wants to pay it into that man's bank to his credit. For this purpose Watkin must add his indorsement, because the right to receive the money will not pass without it; but, as he is only an agent, he does not want to become liable. So he indorses in the following form:

INDORSEMENT BY AGENT WITHOUT LIABILITY.

William Watkin *sans recours;*

or, instead of the French,

William Watkin without recourse to me, *or* to transfer only without becoming liable, *or* (*writing his principal's name*)
JOHN SMITH by the hand of
William Watkin, his Agent.

(See chap. iv, s. 5.)

But suppose Watkin, instead of being agent, was the person really entitled to the proceeds, and wished to transfer the bill to *his* agent, Davis, without giving him power to transfer again, but only to receive payment or sue, Watkin would then make a

RESTRICTIVE INDORSEMENT.

Pay John Davis only.

WILLIAM WATKIN.

or,

Pay John Davis for my account.

WILLIAM WATKIN.

(See chap. vi, s. 6.)

A payee or indorsee of a bill payable to order who is wrongly designated, or whose name is misspelt, may indorse the bill as therein described, adding, if he thinks fit, his proper signature (B. E. A., s. 32), as

WILLIAM SHAKSPEAR.
WILLIAM SHAKESPERE.

16. A person signing as drawer, indorser or acceptor, and adding words to his signature indicating that he *signs on behalf of* a principal or in a representative

capacity, is not personally liable on the instrument. For example, the following would not involve the signer in liability on the instrument:—

SIGNATURE OF DRAWER, ACCEPTOR, MAKER OR INDORSER, WRITTEN BY AGENT.

JOHN SMITH by Henry Brown, his Agent.
or, JOHN SMITH by the hand of Henry Brown.
or, For JOHN SMITH by Henry Brown, his Agent

The agent might also sign "John Smith" without adding his own name, and, being authorized, he would so bind John Smith; but the person taking the bill or note would ask for the addition of the agent's signature.

Where an executor finds himself in possession of bills of which the deceased was the holder and which have to be indorsed, it will be safe to do so as follows:—

INDORSEMENT OF BILL OR NOTE BY EXECUTOR OF HOLDER.

ALFRED WILLIAMS, as Executor of X. only, and *sans recours*.

Suppose a promissory note is made payable to the order of the Treasurer of the Blind Asylum, the following form may serve for his indorsement.

INDORSEMENT BY TREASURER OF A CHARITY.

AARON MARKS, as Treasurer of the Blind Asylum only, and *sans recours*.

17. A bill drawn on a corporation (a term which includes joint-stock companies formed under the Companies Acts, 1862—1890) should be addressed to the company and not to its directors. For, if the directors accept it merely describing themselves as directors, the acceptance binds them individually and not the company; while, if they accept on behalf of the company, the bill is not accepted by the drawees, the directors.

The Bills of Exchange Act says, in s. 91, that a bill or note is sufficiently signed by a corporation if sealed with its seal; this is a convenient but not a common way of signing.

The Companies Act, 1862, says in s. 47 that a note or bill shall be deemed to have been made, accepted or

indorsed on behalf of any company under the Act, if made, accepted or indorsed—

(*a*) In the name of the company by any person acting under the authority of the company; or

(*b*) By or on behalf or on account of the company by any person acting under its authority.

Thus if a trading company (see chap. ii, s. 2) is under the Act and someone authorised by it simply writes its name across a draft, the company is bound as acceptor. But, as such a signature bears no evidence of authenticity on its face, it is usual to follow the latter part of the section.

Thus, let us suppose that one limited company engaged in trade draws a bill on another such company, which accepts it. The instrument may be as follows:—

BILL DRAWN BY ONE LIMITED COMPANY ON ANOTHER.

Birmingham,
1*st May*, 189—.

£100 0*s*. 0*d*.

Two months after date pay to The Tinfoil Company, Limited, One Hundred pounds, value received.

To the Soap Company, Limited.

Accepted for the Soap Company, Limited, and by its authority,
Charles White,
Richard Black, } *Directors.*

For the Tinfoil Company, Limited, and by its authority,
ALFRED BOYLE,
Managing Director.

The indorsements may be in either of the above modes or their equivalents; but "J. S., Managing Director of the —— Company," will not bind the company, and, as a drawing or indorsement, would bind J. S.

The authority should be inquired into. If a person signs for a company or individual without authority he is liable to the holder in an action for misrepresentation, and, if he knew he had no authority, he may be criminally liable.

The accurate and full name of the company is important. Where the company is limited, "Limited" is a part of its name. "And reduced" may also be a part of its name.

18. Bills drawn on persons abroad are sometimes drawn in a "set;" that is, the bill appears on (say) three separate pieces of paper in identical terms, except that one is called the first, another the second, and another the third of exchange. Each refers to the others and is only to be paid if the others are not paid; the whole set in fact constituting one bill. The drawer will sometimes indorse one part and give it to the indorsee and send another for acceptance; but only one part is accepted. The following is the form of the

FIRST PART OF A SET OF THREE.

£100 0*s.* 0*d.* *London, 1st February,* 189—.

Sixty days after sight pay this our first of exchange (second and third of the same tenor and date being unpaid) to the order of A. B. and Co. One Hundred pounds, value received.

To Mr. Y. Z., Sydney. W. X. AND Co.

The second part will bear "1st and 3rd of the same tenor and date being unpaid," and the third will bear "1st and 2nd," &c.

On this head I will quote the section, 71, of the Bills of Exchange Act relating to

Bill in a Set.

71. (1.) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

(2.) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3.) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the first presented to him.

(4.) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5.) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6.) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

19. Section 83 of the Bills of Exchange Act says:—

(1.) A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum of money to, or to the order of, a specified person or to bearer.

(2.) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3.) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

The law relating to bills applies generally to notes. (B. E. A., s. 89.)

20. The following is a

PROMISSORY NOTE BY ONE PAYABLE ON DEMAND.

£50 0*s.* 0*d.* *London, 1st June,* 189—.

On demand I promise to pay to Humphrey Reed or order Fifty pounds.

THOMAS MORE.

See as to notes of this kind chaps. i, s. 3; iv, ss. 19—21; x, s. 6.

If "on demand" were omitted, this note would be payable on demand [B. E. A., s. 10]. "I promise to pay to my order," etc., is not a note until I have indorsed it.

Instead of "on demand" the form above given may begin with the words ["Two] months after date," *or* "after sight," *or* "after the death of A. B."

A. B. is bound to die at some time; so the due date, though not fixed, is determinable; but "after the birth of a son of J. S." would be neither a fixed nor determinable time.

21. Section 85 of the Act says:

(1.) A promissory note may be made by two or more makers, and they may be liable thereon jointly or jointly and severally according to its tenor.

(2.) Where a note runs "I promise to pay" and is signed by two or more persons, it is deemed to be their joint and several note.

The following is a

JOINT PROMISSORY NOTE BY TWO.

£50 0*s.* 0*d.* *London, 1st July,* 189—.

Six months after date we promise to pay to Humphrey Reed or order Fifty pounds.

THOMAS MORE.
ISAAC WALTON.

The following is a

JOINT AND SEVERAL PROMISSORY NOTE BY TWO.

£50 0*s.* 0*d.* *London, 1st July,* 189—.

Six months after date we jointly and severally [*or* we and each of us] promise, etc. [*follow the last preceding form*].

A joint promise by two is a promise by the two and not by each; a joint and several promise by two is a promise by both together and by each one. The latter form is preferable, because a judgment against one is no discharge of the other; whereas in the case of a joint promise it is a discharge of both.

22. Days of grace (see chap. ix, s. 12) are allowed on all promissory notes payable *after* date, sight or presentation. If it is desired to avoid days of grace, say "[Six] months after date [*or* sight] *without grace* I promise," etc.

23. Promissory notes may be indorsed like bills of exchange, and, like them, when not made in the body payable to bearer, can only be negotiated by the indorsement of the payee.

In order to charge the maker or makers, notes in the forms given above need not be presented at all. Nor need they though he gives his address, as

THOMAS MORE,
120, Cornhill,

or specifies a place of payment not in the body of the note, as

THOMAS MORE,
Payable at the —— Bank.

But in order to charge the indorsers these notes must be presented for payment somewhere. Presentment need not be personal, but may be made by presenting the note at the maker's place of business, or if he has none at his abode or, if that cannot be found, to him personally anywhere. But where a place of payment is named on the bill, presentment there will suffice to preserve the liability of the indorsers. (B. E. A., s. 87 [3].)

But sometimes the note is made, in the body of it, payable at a particular place, as follows:

PROMISSORY NOTE MADE IN THE BODY PAYABLE AT A PARTICULAR PLACE.

£100 0*s.* 0*d.* *London, 1st November,* 189—.

Three months after date I promise to pay at the London and Westminster Bank, Pall Mall, to Humphrey Reed or order One Hundred pounds.

THOMAS MORE.

In this case the note must be presented during business hours at the bank named in order to render either the maker or the indorsers liable. (B. E. A., s. 87 [3].) To charge the maker, it may be presented there at any time until the remedy is barred by the Statute of Limitations; but to charge the indorsers it must be presented on the due day. (See chap. ix, ss. 5, 12; and chap. xxiv.

A person taking a promissory note will do well to have a place of payment indicated at the foot of the bill and not in the body, especially where there are more than one maker, because the maker or makers are liable without presentment, and it is easy to present if necessary to charge indorsers.

24. The modes by which companies under the Companies Acts, and the modes by which other corporations may sign a bill or note have been already stated (s. 17) and will be illustrated by the following:

PROMISSORY NOTE BY UNLIMITED IN FAVOUR OF LIMITED COMPANY.

£100 0*s.* 0*d.* *London, 1st September,* 189—.

Three months after date the Indian Tea Company promises to pay the Natal Sugar Company, Limited, One Hundred pounds, value received.

For the Indian Tea Company and by its authority,
A. B.
C. D. } Directors.

[*or as the case may be.*]

As to the power of corporations to sue on a bill or note or to transfer it by indorsement though they may be without capacity to make themselves liable on such instruments, see chap. ii, s. 2.

Without much repetition it would be impossible to collect in this chapter all that has to be said on the forms of bills and notes; but the reader will find remarks on the subject in chapters ii to vii, and the following paragraphs may be useful.

25. Where two or more persons, not signing in a firm name, join in making a promissory note, it may either be a *joint* or a *joint and several* note. It is called joint when the words used express only one promise, though made by more than one person, as "We promise to pay, &c.;" and it is called joint and several when, in addition to the joint promise of the two makers, the words express a separate or several promise of *each* maker, as "*We and each of us*," or "*We jointly and severally* promise to pay, &c."

The last-mentioned form is far preferable because the holder gets two distinct promises, and a judgment against one promisor is not a discharge of the other; though a release of one would be a discharge of both.

26. The undertaking of the persons primarily liable on bills, where those persons are more than one, is always a joint and not a joint and several liability, bills being always directed to the drawees jointly and (if accepted) accepted jointly. If a bill be accepted in the name of a firm by a person having authority, as "B. D. and Co.," or by each partner, as "A. B." "C. D.," it is equally a joint acceptance. One of two or more joint contractors may now, however, be sued separately, subject to the right of the defendant to insist on his co-contractor or co-contractors being sued also in the same action.

27. No precise form of words is necessary to constitute a promissory note, but any language importing a distinct promise to pay at all events and without condition is sufficient.

If there be no words amounting to a promise, the instrument is merely an I O U, or in some cases an agreement.

Where a promissory note was in the words "I promise *never* to pay," the word *never* was struck out as being fraudulently inserted.

Other words may be contained in a note without invalidating it, as, for instance, a recital that deeds have been deposited by way of security for the payment of the money.

28. A man may make a note payable to himself or order and indorse it, after which it becomes a complete note, but he cannot make a note payable to himself and another man.

29. Though bills and notes are usually written in certain established forms, it may yet be as well to lay down a few rules by way of enabling the reader to distinguish between a mere irregularity and a fatal error or omission.

A bill should contain a distinct order to pay; but no particular form of words is necessary.

It is usual and proper, but not strictly necessary, to write at the top of a bill or note the name of the place where it is made.

With the exceptions above mentioned, a date, though usual and proper, is not strictly necessary; but if the bill or note be payable a certain time after date, time will count from the day of the issue of the instrument, which the payee is entitled to fill in.

Now that acceptances must be in writing, any condition on which the acceptor's liability is to depend must be in writing also, as "Accepted, payable on giving up bill of lading for 76 bags of cotton per ship R," which is, of course, a qualified acceptance.

30. It will thus be seen that a bill of exchange may become a conditional undertaking on the part of the acceptor, and of every indorser who indorses after acceptance; for though the drawer's direction to pay must be absolute, yet, if the holder is content with a qualified acceptance (see chap. vi), the contract may be conditional. But a promissory note can never become a conditional contract on the part of the person primarily liable.

31. It is usual and proper to write in the body of a bill or note in words, at full length, the sum for which the instrument is payable, thereby guarding against any mistake or alteration. It is also the practice to write at the top or bottom of the bill the same sum in figures; this is meant merely to assist the eye, but may nevertheless be useful to supply an accidental omission in the body of the instrument, as if the word *pounds* be omitted by mistake.

But in case there be any difference between the sum stated in figures and the written sum, the latter will *always* be considered as the sum contracted for; and a banker at whose house the instrument is payable will not be justified in paying attention to the figures.

32. The *time* of payment is usually stated both in bills

and notes. An instrument which is silent on this point will be payable on demand. It has already been stated (see chap. vi, s. 5) that the words "after sight" mean after sight testified by acceptance, *i. e.* after acceptance, and if acceptance of such a bill be refused, it is dishonoured; but a *note* being incapable of acceptance, it is, when payable after sight, to be merely *exhibited* to the maker. As to days of grace, see chap. ix, s. 12.

33. In promissory notes, and bills not payable to drawer or his order, but to a third party as payee, the payee should be particularly described. But if the instrument gets into the hands of a wrong payee, he can neither sue, nor confer a title by transfer or indorsement. The payee need not necessarily be described by his name, but he may be described by his office, as "the master of the ship B," or "the trustee under A's will."

Where there is any doubt about the name, or where the name is common, it may be well to add the designation of the payee's occupation; and the word *junior* should be used to distinguish him from his elder relatives with the same name.

A person meant by the drawer to be the payee may fill up with his own hand a blank left for the payee's name.

As to bills made in the body or by indorsement payable to the order of two or more, see chap. iv, s. 10; and as to the payee being wrongly designated, or his name being misspelt, see chap. iv, s. 7.

34. The words *value received* are not essential. The consideration may be stated in any other way or omitted altogether, but an *alteration* in the statement of the consideration will be such a material change as will invalidate the instrument for want of a new stamp. (See chap. xv.)

A bill should be properly directed to the drawee, but when he has once accepted it he cannot object to a mistake in the direction. But a bill cannot be addressed to one man, and accepted by another, except for honour. (See chap. vi, s. 8.)

A bill, though accepted, cannot be sued upon without the drawer's signature, but it may be inserted at any time.

A note may be signed by the maker in the body of

the instrument, as "I, A. B., promise to pay," etc.; and it is said that the drawer's signature may be similarly placed, as "I, A. B., direct you to pay," etc. The word "pay" is said not to be necessary provided an equivalent be used, as "credit in cash." But there are not many equivalents.

If any place of payment is stated in the *body* of a note, it is payable there only. As to the place where bills are made payable, whether in the body or the acceptance, see chapters i, vi, and ix, s. 7.

Where the drawee is directed to pay *as per advice* or according to advice, it is not safe to pay without.

A promissory note must not be expressed to be payable out of a particular fund; but a fund may be mentioned in a bill, merely by way of direction to the drawee how to reimburse himself.

Indorsements, though properly made on the back of bills and notes, are not invalid if made on the face.

Instruments defective as bills or notes may still be evidence of agreements, in which case, if for £5 or over, they will generally require a stamp of 6*d.*, which can be adhesive, and be affixed after they are written. It should be cancelled by the person who first signs.

A note beginning "I promise," and signed by more than one, is several as well as joint. (See s. 25.)

A new maker cannot be added to a note already issued, unless he is a person who had agreed before issue to be a maker. The signature of the new maker alters the note, and invalidates it for want of a new stamp.

CHAPTER XXIII.

OF ACTIONS ON AND ABOUT BILLS, CHEQUES, AND NOTES.

1. *Notice of dishonour, if required, must precede writ.*
2. *Speedy judgment obtainable in High Court in action on Bill, &c.*
3. *Holder may sue all parties in same action.*
4. *Proceedings in County Court under Act of* 1855, *on Bill, &c.*
5. *Judgment against one or more.*

6. *Action against firm. Judgment against firm.*
7. *Other actions concerning Bills, &c.*
8. *Lost Bill. Getting Duplicate. Action on lost Bill.*
9. *Action may be on Bill or on Consideration.*
10. *Who may sue.*

1. If the holder resolves on pursuing his remedy against any party who is entitled to notice of dishonour, it is important to see that the notice was received (or was posted so as to be presumed to have been received) by the defendant before the issue of the writ, or, if the cause be in the County Court, before the entry of the plaint; otherwise the plaintiff will fail against that defendant.

2. The security offered by bills, cheques, and notes is much enhanced by the fact that the demand on such instruments is a liquidated demand, *i.e.* a claim to a fixed and ascertained sum, and that facilities are afforded in the High Court for obtaining speedy judgment for such demands.

In that Court the holder of a dishonoured bill, note, or cheque may issue a writ specially indorsed under Order iii, rule 6, with a concise statement of his claim on the instrument but without demanding interest, unless on the face of the instrument it is made payable with interest; for, unless it is so payable, interest is damages and therefore unliquidated.

If the defendant does not enter an appearance within the eight days allowed him, the plaintiff may sign judgment for the amount claimed and costs. If the defendant does enter an appearance, the plaintiff may proceed under Order xiv and may make an affidavit, or get one made by someone who knows the facts, showing that the debt is due and that the deponent believes there is no defence. The plaintiff then serves a summons, with a copy of the affidavit, on the defendant or his solicitor requiring the defendant to attend before a Judge in four days. If the defendant does not then satisfy the Judge that there is a good defence or show such facts as may be deemed sufficient to entitle the defendant to defend, the Judge will order final judgment for the amount with interest.

3. Order xvi, rule 5, gives the holder a further advantage by allowing him to sue in the same action all the parties liable to him on the instrument; but, if one satisfies the judgment, the others are discharged.

4. "The Summary Procedure on Bills of Exchange Act, 1855" (18 & 19 Vict. chap. 67), is one of which the holder can only avail himself if less than six months has elapsed since the bill, cheque or note was due; the six months being counted in the case of a note payable on demand from the date. And the Act is only in force in the inferior courts, such as the County Court; for it has been repealed generally by 46 & 47 Vict., chap. 49, but is kept alive as to the County Courts and certain other inferior courts by sec. 7 of that Act.

Under the Act of 1855 the holder may, as in the High Court, include in the same action all parties liable to him on the instrument. The summons sets out the instrument and all the indorsements thereon, and calls upon the defendant, or defendants, to appear within twelve days. In order to appear, a defendant must either pay into Court the amount claimed, or satisfy the Judge on affidavit that there is some legal or equitable defence, or must show some facts throwing on the plaintiff the burden of proving consideration, or such facts as the Judge may think sufficient, and the defendant may be required to give security.

In default of appearance the plaintiff, on filing an affidavit of personal service, gets judgment for his claim and costs; but the Judge may afterwards set aside the judgment or stay execution on such terms as he may think fit.

5. When judgment is obtained in any Court against two or more persons, whether partners or not, execution may be levied on the property of either or both; but if the debt and costs are paid by either, or are realized by levying on his goods, the Court will restrain the plaintiff from levying on the goods of the other.

6. Where either party to an action is a firm, the other party is entitled to be informed of whom the partnership is composed, and judgment in favour of a plaintiff against the firm is, generally speaking, judgment against each individual whom the plaintiff, at the time of suing, knew to belong to the firm at the time the obligation sued upon was incurred.

When judgment is obtained, either by plaintiff or by defendant, against a firm, the property of the firm can

be taken in execution as well as the property of each partner; but when the judgment is only obtained against some or one of the partners, the property of the firm cannot be taken in execution, though a receiver can be appointed to receive the share of each partner who is liable on the judgment. (Partnership Act, 1890, sec. 23.)

7. An action may not only be brought *on* a bill, cheque, or note, but *for* such instruments or to enforce some right arising out of them. For instance, an action may be brought to recover possession of a bill, etc., or to restrain its negotiation, or to require a new bill, etc., to replace one that was lost *while current*, which will be mentioned presently. So an action may be brought to make a man indorse a bill, etc., which requires his indorsement, and which he has transferred without indorsing. See chap. iv, sec. 12; B. E. A., sec. 31 (4).

8. As regards a lost bill, cheque or note, the Act lays down as follows:—

> Where a bill has been lost *before it is overdue*, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.
>
> If the drawer on request as aforesaid refuses to give such duplicate bill he may be compelled to do so. (Sec. 69.)
>
> In any action or proceeding upon a bill, the Court or a Judge may order that the loss of the instrument shall not be set up provided an indemnity be given to the satisfaction of the Court or Judge against the claims of any other person upon the instrument in question. (Sec. 70.)

These provisions, as has been already said, apply to cheques and notes. As regards a lost bill which has been accepted and indorsed, it will be observed that sec. 69 gives the holder a very imperfect substitute; for it provides no means by which he may get it accepted or indorsed again. When a bank note is lost the owner should tender an indemnity to the banker, and, if the note has not been cashed, get a new one. Before suing on a lost instrument under sec. 70, the owner should tender the indemnity required; otherwise, if the loss is set up by way of defence, and an application is made to strike out that defence on giving an indemnity, it must

be at plaintiff's expense, and he will have to pay costs to that time.

9. The holder of a dishonoured bill, cheque or note, may sue on the instrument itself or on the consideration, or both. If I sell a man goods at three months' credit, and he gives me a bill at three months which is dishonoured, I may sue in the same action on the bill and for the price. It is better not to sue on the consideration alone for several reasons: first you must prove the consideration, such as the sale and delivery of the goods and their price value, and then, if the defendant says he gave a bill, you have to prove dishonour. But, if you sue on the bill, the consideration is presumed and the sum due is fixed.

The person to bring the action on the bill, etc., is the person who is, at the commencement of the action, entitled to receive the money. It is a good defence that the bill, etc., is outstanding in the hands of an indorsee; but if that indorsee only holds it as agent or trustee for the plaintiff, the latter may sue though not in actual possession of the bill when the action begins.

10. The actual holder is entitled to sue unless it be shown that he holds *adversely to* the true owner. If the holder sues as agent, as where the owner has indorsed to him "pay C. D. for my use," or the like—see chap. iv, s. 6—any set-off or other defence available against the owner will be available against the plaintiff, his agent.

CHAPTER XXIV.

OF NON-BUSINESS DAYS.

1. *Non-business days are excluded from certain reckonings of time.*
2. *Non-business days in England and Ireland.*
3. *In Scotland.*
4. *Table of non-business days in relation to payment of bills.*
5. *Certain acts void if done on any of the days.*

1. The days of grace have been mentioned in chapter

ix, s. 12. They are three days added to the time of payment as fixed by the bill or note, unless it is payable on demand (as a cheque must be) or is expressed to be "without grace."

Where the time limited by the Act for doing anything is less than three days (as in the case of notice of dishonour and protest), non-business days are excluded. These are—

(*a*) Sunday, Good Friday, Christmas Day;

(*b*) A bank holiday under the Bank Holidays Act, 1871, or Acts amending it;

(*c*) A day appointed by Royal Proclamation as a public fast or thanksgiving day.

All other days are business days. (B. E. A., s. 92.)

2. In England and Ireland, taking the bank holidays, this makes the non-business days Sunday, Good Friday, and Christmas Day; the bank holidays, namely, Easter Monday, the Monday in Whitsun week, the first Monday in August, and the 26th of December if a week day, otherwise the 27th, and any day appointed by proclamation as a public fast day or thanksgiving day or bank holiday.

3. In Scotland non-business days are Sunday, New Year's Day if a week day, and Christmas Day if a week day, otherwise the following Monday, the 26th of December if a week day, otherwise the 27th, Good Friday, Her Majesty's birthday, the first Monday in May, the first Monday in August, and any day appointed by proclamation as a public fast day or thanksgiving day or bank holiday. (See 34 Vict., c. 17; 38 Vict., c. 13; and 43 and 44 Vict., c. 17.)

4. Referring then to B. E. A., s. 14 (chap. ix, s. 12), the following table for England suggests itself:

When the bill or note falls due on—	*The bill or note is payable on—*
Sunday, Christmas Day, Good Friday, A public fast or thanksgiving day.	The preceding business day.

When the bill or note falls due on—	*The bill or note is payable on—*
Easter Monday, Whit Monday, 1st Monday in August, 26th December, if a week day, 27th December, if 26th was a Sunday, Any proclaimed bank holiday.	The succeeding business day.

I say "where the bill or note falls due on," &c., because, where there are days of grace, it falls due on the last of the days; and where it is "without grace" it falls due at the time nominally fixed by the instrument; so the above table will apply to either sort of bill or note.

The table refers only to presentment for payment of bills and notes, and does not apply to the presenting of cheques.

5. If the day on which a cheque should be presented for payment or a bill for acceptance, or on which a bill should be protested, or on which notice of dishonour should be given, falls on any of these days, the thing should be done on the following business day.

A presentment for payment on any of these days will not avail to charge the antecedent parties, nor will a presentment for acceptance.

A notice of dishonour is not bad for being posted or for being received in a letter on any of these days, but the man who so receives it is treated as having received it on the following business day.

CHAPTER XXV.

OF AN I O U.

1. *What it is, and general form.*
2. *Not Negotiable, being merely evidence of Debt.*
3. *Caution as to Stamp.*
4. *Should contain Creditor's Name.*

1. A mere acknowledgment of a debt does not amount to a promissory note.

Such an acknowledgment is frequently made in an abbreviated form, thus:

London, *1st January*, 1858.

To Mr. A. B.

I O U one hundred pounds. C. D.

An acknowledgment in this form is called an I O U, and is evidence that at the time when it was made there was a balance of accounts in favour of the party to whom it was given, and for the amount specified. An instrument which is defective as a promissory note may sometimes be good as an I O U.

2. Being merely evidence of the existence of a debt, it requires no stamp. It is neither a promissory note nor a receipt, but, except that it cannot be negotiated and circulated, it has all the effect of a promissory note payable on demand; for a debt is acknowledged to be due, and may be sued for at any time.

3. It is always desirable to adhere strictly to the above form, for, if words be added expressing a promise to pay the amount on a particular day, the instrument would then be a promissory note, and could not be given in evidence without a stamp. Again, the addition of certain other words might make the document amount to *an agreement*, in which case, if for £5 or over, it would require a stamp. In this case, however, there is less danger, for an agreement may be stamped after it is written, or even at the trial, on payment of a fine, but a promissory note cannot.

4. If the name of the person to whom it is addressed does not appear on the I O U, it will, *primâ facie* be taken as evidence of a debt due to the person who produces it; but this the defendant may, of course, rebut.

To avoid difficulties, the creditor's name should always be mentioned, as in the form given above.

CHAPTER XXVI.

STAMPS.

The stamp duties payable on bills, cheques and promissory notes, are contained in the Schedule to the Stamp Act, 1891.

	s.	*d.*
BILL OF EXCHANGE payable on demand or at sight, or on presentation [this includes a CHEQUE on a banker] . .	0	1
BILL OF EXCHANGE of any *other* kind whatsoever (except a bank note) and PROMISSORY NOTE of *any* kind whatsoever (except a bank note) drawn, or expressed to be payable, or actually paid or indorsed, or in any manner negotiated in the United Kingdom—		
Where the amount or value of the money for which the bill is drawn or made does not exceed . .	£5 .	0 1
Exceeds £5 and does not exceed	10 .	0 2
„ 10	25 .	0 3
„ 25	50 .	0 6
„ 50	75 .	0 9
„ 75	100 .	1 0
For every £100, and also for every fractional part of £100, of such amount or value	.	1 0
Bank Note—		
For money not exceeding	£1 .	0 5
Exceeding £1 and not exceeding	2 .	0 10
„ 2	5 .	1 3
„ 5	10 .	1 9
„ 10	20 .	2 0
„ 20	30 .	3 0
„ 30	50 .	5 0
„ 50	100 .	8 6

A banker may be licensed or otherwise authorized to issue unstamped bank notes. Bank notes which are duly stamped, or are issued unstamped by bankers having a right so to issue them, may be re-issued without being liable to any stamp duty by reason of the re-issuing. (See the Act, ss. 30, 31.)

The CHIEF EXEMPTIONS are:—

Drafts or orders drawn by any banker in the United Kingdom upon another banker in the United Kingdom and payable to bearer

or to order, and used solely for settling accounts between the bankers.

Letters written by one such banker to another such banker directing the payment of a sum of money, but not payable to bearer or to order and not sent or delivered to the person to whom payment is to be made, or to any one on his behalf.

Letters of credit granted in the United Kingdom authorising drafts to be drawn out of the United Kingdom payable in the United Kingdom.

Bank of England notes, orders of the Paymaster General of the Court of Chancery in England or of the Accountant General of the Supreme Court in Ireland; warrants for payment of annuities granted by the National Debt Commissioners or for any dividend or interest in Parliamentary Stocks or Funds; bills by the Lords of the Admiralty on the Accountant General of the Navy; bills drawn for payment of Army pay or allowance from any public account; coupons attached to any security.

Drafts or orders drawn on any banker in the United Kingdom by an officer of a public department of the state for payment of money out of a public account.

Bills drawn in the United Kingdom for the sole purpose of remitting money to be placed to any account of public revenue.

Coupons or warrants for interest attached to and issued with any security, or with an agreement or memorandum for the renewal or extension of time for payment of a security.

Instruments are liable to stamp duty as bills of exchange which are not really such. For the purposes of the Bills of Exchange Act and of the law in general, a "bill of exchange" is defined in sec. 3 of that Act. (See chap. xx, sec. 14.) But sec. 32 of the Stamp Act, 1891, makes that term include, *for the purpose of stamp duty*, "any instrument in writing (except a bank note) entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money."

And "a bill of exchange payable on demand" (a term which includes a *cheque* on a banker), is made *for the purpose of stamp duty* to include an order for the delivery of a bill or note in satisfaction of any sum of money, or for the payment of money out of any particular fund which may *or may not* be available, or upon any condition or contingency which may *or may not* be performed or happen, and an order for the payment of money sent or delivered by the maker to the person who is to make the payment and not to the person who is to receive the payment.

A "promissory note," by s. 33 of the Stamp Act, 1891, is made to include, *for the purpose of stamp duty*, a note promising payment out of a particular fund, which may *or may not* be available, or upon any condition or contingency which may *or may not* be performed or happen. This will include many instruments which are not included in the definition of a promissory note given in s. 83 of the Bills of Exchange Act. (See chap. xxi, s. 2.)

Many instruments, therefore, require stamps as bills, cheques or notes, which are not really bills, cheques or notes at all.

The duty on all bills and promissory notes, not being on demand, including the *penny* duty on bills and notes for not more than £5, must be denoted by an impressed stamp, which cannot be put on after the execution of the instrument. The only exception is where the bill or note is written on paper impressed with a stamp of the right amount, but meant for a different sort of instrument; in which case the right stamp may be impressed on payment of the duty, and 40*s.* if bill is current, or £10 if it is overdue. (Stamp Act, 1891, s. 37.)

The duty of a penny upon "a bill of exchange payable on demand or at sight or on presentation" (which includes a *cheque on a banker*) *may* be denoted by an adhesive stamp. Bills and notes drawn or made out of the United Kingdom, or purporting to be so, *must* be stamped with adhesive stamps according to the value they bear as given in the above scale. (Stamp Act, 1891, s. 34.)

The obligation to see that a bill, cheque or note is duly stamped is imposed on every one who "issues, indorses, transfers, negotiates or presents it for payment," and no instrument is properly stamped with an adhesive stamp unless it is properly cancelled. But the person to whom a bill payable on demand is presented may affix the penny adhesive stamp and cancel it, or may cancel one already put on. The banker may, therefore, stamp an unstamped cheque. (See Stamp Act, 1891, s. 38.)

An instrument required to be stamped with an adhesive stamp is not duly stamped unless the person required to cancel the stamp "cancels the same by writing

on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, *or otherwise* effectively cancels the stamp and renders the same incapable of being used for any other instrument, or for any postal purpose, *or unless* it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time." (Stamp Act, 1891, s. 8.)

So, a document may be properly stamped with an adhesive stamp when the stamp is not cancelled at all.

INDEX.

The Roman numerals stand for the chapters; the Arabic numerals for the sections of the chapters; b. *for "bill;"* n. *for "note;"* d. c. *for "due course" and* B. E. A. *for "Bills of Exchange Act*, 1882."

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